SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 88-47 and
88-127

IN THE MATTER OF :
:
LOUIS B. YOUMANS :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 21, 1989

Decided: November 7, 1989

Wendy L. Mager appeared on behalf of the District VII 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 on two presentments filed by the District VII Ethics Committee. The pertinent facts, as found by the Committee, are as follows:

I. DRB 88-127

The Puckett Matter, VII-86-06E

In June, 1984, Respondent was engaged by Mrs. Patricia Puckett and her son, Andrew Marshall Puckett, to defend Mr. Puckett in connection with his indictment on criminal charges. The bills for respondent's services were paid by Mrs. Puckett, and the representation continued until terminated by her by letter of January 28, 1986 (Exhibit P-17), subsequent to the filing of the grievance in this matter.

In August of 1985, Respondent told Mrs. Puckett that his firm (a professional corporation) was experiencing financial problems because, although the firm had plenty of receivables, clients were not paying bills in a timely fashion.

In August, September and October, 1985, Respondent and Mrs. Puckett frequently discussed both her son's case and the firm's finances. Mrs. Puckett told Respondent that her son John had $35,000 in savings, and the possibility of respondent's firm borrowing this sum was discussed.

In or about November, 1985, Respondent advised Mrs. Puckett of an immediate cash-flow problem which might cause his firm to be unable to meet its payroll. Mrs. Puckett volunteered to loan respondent $2,500 at no interest for two or three weeks.

Respondent accepted Mrs. Puckett's offer of a loan, which was repaid about four weeks later.

On December 2, 1985, Respondent called Mrs. Puckett and said that his firm needed funds because of a $10,000 "bank error". In fact, the problem was a difference between respondent's projection of the firm's bank balance and the reality, due to some client checks which were returned for non-sufficient funds. Respondent told Mrs. Puckett that money was needed to pay a malpractice insurance premium, without which the firm could not continue in practice. He solicited Mrs. Puckett's help.

Mrs. Puckett told Respondent that her son John (aged 18) might be able to loan money to the firm. She made a point of the fact that other loans made by John had not been repaid, and that she wanted to be certain that did not happen again. Respondent assured Mrs. Puckett that any loan from John to his firm would be repaid. Mrs. Puckett thereupon spoke to John and arranged for him to loan $5,000 to respondent's firm.

On December 3, 1985, Mrs. Puckett brought a check for $5,000 to respondent's office. She again requested assurances that her son John would be repaid, which respondent gave. He executed a note on behalf of his firm (Exhibit P-2), promising to repay the $5,000 together with 25% interest on December 24, 1985.

On May 29, 1985, Respondent's firm had filed a petition pursuant to Chapter 11 of the Federal Bankruptcy Act. At the time of the loans made by Mrs. Puckett and her son, the firm was operating as a debtor-in-possession. Loans made to the debtor-in-possession, if it could not successfully reorganize under Chapter 11, would be subordinated to the claims of the firm's secured creditors.

At no time prior to December 3, 1985 did Respondent

mention the word "bankruptcy" to any member of the Puckett family. Although Respondent claims to have discussed the Chapter 11 proceeding with Mrs. Puckett, by his own admission he did not mention "bankruptcy" because he "doesn't consider a Chapter 11 a bankruptcy." By respondent's further admission, he did not explain to Mrs. Puckett the effect on her son's loan if the Chapter 11 proceeding was converted to a Chapter 7 proceeding, which was done at the Trustee's direction on or about January 21, 1986....

Respondent traded on Mrs. Puckett's lack of legal and financial sophistication, her concern for the continued representation of her son Andrew Marshall in the criminal proceeding against him, and her trust in the confidential relationship to Respondent, in obtaining the $5,000 loan from John Puckett at a time when, to respondent's knowledge, his firm's ability to repay the loan was seriously in doubt.

Mrs. Puckett went to see Respondent on December 24[sic], 1985, at which time he advised her that there were no funds available to repay the $5,000 loan.

On or about Thursday, January 2, 1986, in response to her repeated inquiries, Respondent gave Mrs. Puckett a check drawn on the firm's account in the amount of $5,141.17, to repay the loan from her son John. Respondent asked Mrs. Puckett to hold the check until the following Monday. On Monday, January 6, he called Mrs. Puckett to ask that she further delay depositing the check, but Mrs. Puckett had already gone to the bank and done so.

By notice of January 8, 1986, the bank returned Respondent's firm's check for non-sufficient funds.

At the time of giving Mrs. Puckett this check, Respondent had substantial doubts that there would be sufficient funds to cover it.

When Mrs. Puckett advised Respondent that the check had been returned, he admitted the the firm had no funds to cover it. Later, he suggested to Mrs. Puckett that John Puckett file a claim with the Bankruptcy Court.

After Mrs. Puckett filed an ethics grievance, Respondent repaid the $5,000 loan, with interest, from personal funds over a period of several months.

II. DRB 88-44

The second presentment contains five matters. The facts, as found by the Committee, are as follows:

The Basaman Matter, VII-86-9E

In April 1985 respondent was retained by Mr. Basaman to represent him in a series of legal actions, including four negligence cases and one Title VII discrimination suit. The Title VII suit was filed on or about October 4, 1985 against the United States Postal Service and 14 other defendants. As of the date of the filing of the ethics complaint by Mr. Basaman, August 20, 1986, only nine of the defendants had been served. Mr. Basaman had paid respondent the sum of $5,000 in April 1985, which respondent characterized as a non-refundable retainer for representation in the Title VII case. Between April of 1985 and the filing of the complaint in October 1985, no effort was made to obtain injunctive relief on behalf of Mr. Basaman [1T61].[1] Respondent testified that this delay occurred as a result of his waiting for Mr. Basaman to advise him of the names of other individuals who were to be joined with Mr. Basaman as plaintiffs in the matter. He further testified that he finally filed the complaint in October 1985 in order to preserve the cause of action against the running of the statute of limitations.

Mr. Basaman, however, testified that his purpose in paying the $5,000 to respondent in April of 1985 was to obtain immediate legal assistance [1T92]. He was to be the only plaintiff and he did not want to delay the suit until others were joined as plaintiffs [1T101-1T102].

Ultimately, the Title VII suit had to be taken over by another attorney, and at that time was dismissed for failure to serve all the defendants. Thereafter, the case was reinstated, but subsequently again dismissed on motion of the United States Attorney addressed to the running of the statute of limitations.

The panel accepted as credible the testimony of Mr. Basaman and rejected that of respondent. It is the panel's conclusion that respondent's acceptance of the representation of Mr. Basaman in April 1985, and failure

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[1] 1T denotes the transcript of the District Ethics Committee hearing held on April 6, 1987.

to file a complaint until October 1985, and thereafter pursue service on all the defendants in that action, coupled with respondent's failure to obtain information or prepare necessary affidavits to obtain injunctive relief on behalf of Mr. Basaman, constituted gross negligence in his representation and is a violation of R.P.C. 1.1(a).

The panel further concludes that the same facts warrant a finding that respondent also violated R.P.C. 1.3, failure to use reasonable diligence and promptness in the representation of a client.

In December 1985, respondent called Mr. Basaman and advised him that he was in a financial crisis and required $3,500. On December 19, 1985 Mr. Basaman met respondent in respondent's office and gave him checks totaling $3,500 which had been obtained by Mr. Basaman as loans from several finance companies. Respondent told Mr. Basaman that the money would be used to pay his bills, particularly mentioning a telephone bill of about the same amount. Further, respondent said that he would make the payments on the loans taken out by Mr. Basaman. Finally he stated that the financial crisis he was in would end in January or February of 1986. None of the $3,500 has ever been repaid to Mr. Basaman or on his behalf to the finance companies.

At the time that Mr. Basaman gave this money to respondent, respondent had filed a proceeding under Chapter 11 of the United States Bankruptcy Code which, on January 23, 1987, was converted to a Chapter 7 proceeding. Mr. Basaman testified that respondent did not advise him of the bankruptcy proceeding at the time he gave him the $3,500 [1T93], and that there was no question in his mind that he was making a loan to respondent which respondent had promised to repay. Mr. Basaman further stated that he made the loan in order to protect the Title VII case respondent was handling for him [1T93].

Respondent, on the other hand, testified initially that the money was not a loan but an additional retainer on the Title VII suit [1T21]. He presented no document to the panel supporting his claim that the money was a retainer, nor did he make any effort to obtain from the attorney who had the file on the Title VII case any such documentation. He then testified that the $3,500 was accepted by him as a credit against a recovery in the first of the negligence cases that he was handling for Mr. Basaman [1T130]. In addition, respondent stated that when he accepted the $3,500 from Mr. Basaman, he had

given him no accounting of services rendered to date, that his firm had not requested any additional fees, and that Mr. Basaman had volunteered the payment of the money to him.

Responding to a question from the panel as to why respondent did not consider the $3,500 to be a loan if it was to be repaid from prospective fees in a negligence case, respondent testified that he simply never perceived it in that light [1T58]. Finally, respondent testified that on December 19, 1985, when he took the money from Mr. Basaman, and Mr. Basaman advised him that he had borrowed the money in order to provide it to respondent, respondent indicated that he could not take it, but then reconsidered because not to accept the money would not be fair to his staff and to Mr. Basaman. At the time he took the money respondent had a negative cash flow and had exhausted his credit.

Based upon the testimony, the panel concludes that the $3,500 was advanced by Mr. Basaman to respondent as a loan, and that respondent promised to repay the loan. The panel further concludes that the solicitation of such a loan without revealing the existing pressing financial circumstances, was misconduct under R.P.C. 8.4. Finally, the failure on the part of respondent to disclose to Mr. Basaman his financial circumstances at the time of the loan constituted dishonesty and deceit, also in violation of R.P.C. 8.4.

The panel finds no evidence to support a violation of R.P.C. 3.1 (frivolous claim).

The Hayakawa Matter, VII-86-10E

The complainant in this matter is an attorney of the State of New Jersey who, at the time of the incident in question, was working in respondent's law office. Complainant testified that she entered into a retainer agreement with a client of the office, the Moorish Science Temple of America, numbers 10 and 48, under an arrangement whereby a $1,000 retainer would be held in the firm's trust account and drawn against only as time was expended on behalf of the client. Upon receipt of the $1,000 respondent did not deposit the check in his trust account but rather into his attorney's account. While complainant and respondent differed in their testimony on the facts, it is the panel's conclusion that the testimony of the complainant was more credible.

Complainant said that just before November 1985, the client asked the firm to review its corporate documents

and obtain an Internal Revenue Service non-profit exemption status for it. She testified that respondent had told her to obtain a retainer, and she said she would seek such a retainer, but that it would have to be deposited in the firm's trust account because the services for which it was to be rendered had not yet been performed [1T170-1T172]. She was concerned that if the money did not go into the trust account, it would be spent immediately because of the pressing financial situation of the firm. The retainer of $1,000 was received by the firm in November 1985, but complainant did not learn the money had been received until late December 1985. When she discovered that the money had been paid, she also found out that the money had not been put in trust, in violation of the retainer agreement made with the client. She also testified that respondent told her he had deposited the money in the bank.

Respondent initially testified that he was not aware of the retainer agreement with the Temple until January 14, 1986. The panel finds, contrary to that testimony, that respondent was or should have been aware of the terms of the retainer agreement at the time of the earlier bank deposit. Complainant testified specifically that prior to the receipt of the check she had told respondent that it was to go into the trust account [1T213]. Also a copy of the client ledger card, admitted into evidence as Exhibit P-3, clearly indicates that the money received was considered as unearned. In his testimony respondent asserted unequivocally that he was the person to whom all checks were directed at this time because of the difficult financial circumstances of his firm [P-1 in evidence, with the attached Youman's letter of April 9, 1986, p. 8]. The panel does not accept respondent's testimony that a signed retainer agreement that was returned to the firm by the client was not with the check when he deposited it.

With respect to this charge respondent admits that there was at least a technical violation of R.P.C. 1.15.

Based upon the testimony and the evidence submitted the panel concludes that respondent violated R.P.C. 1.15 in knowingly not holding client's property separately from his own when he was under obligation to do so.

The Hopkins Matter, VII-86-17E

Ms. Hopkins testified that in July 1985 she asked respondent to represent a friend of hers in the appeal of a criminal conviction, for which work she would pay

the fees. Initially she spoke to an associate of respondent's law firm and was advised that the fee would be $5,000 plus $400 for each court appearance. Complainant advised the firm, both by letter and in several telephone calls, that she could not afford the fees. Finally, in response to a telephone call from respondent, the complainant went to respondent's office and gave him a check for $2,500. On that visit, after she had given him the check, he told her he needed an additional $1,200 to purchase a transcript. Complainant advised respondent that she could not afford the additional money and demanded her $2,500 check back, but respondent refused to return it [1T229]. The next day complainant stopped payment on the check and advised respondent of her action. Respondent advised her that she could not take this action and that he had prosecuted people criminally for doing so [1T230-1T231]. Complainant thereupon issued a new check for $2,500 to respondent. At the time complainant told respondent that she had stopped payment on the check, respondent replied to her that he had already begun his services to her friend. Complainant told respondent she would pay him for the work done to date but respondent did not answer [1T248-1T249].

Respondent's testimony was limited to the visit at which complainant told him she had stopped payment on the check. He stated that he told her he had already done a lot of work, and did not understand how she could stop the check knowing that respondent's firm was "on the hook" to go forward with the representation. He told her further that the firm was entitled to the check and would obtain it if necessary through suit against her. When asked by the panel whether complainant had requested the return of the first $2,500 check because she could not afford his services, respondent replied that he had not then perceived her to be asking for her money back, but on reflection believes that what she said could have been construed as indirectly requesting that the money be returned to her [2T30].[2] He also conceded that he did tell complainant that he had prosecuted people criminally for stopping checks [2T32-2T33]. Finally, in response to a panel question about whether complainant had offered to pay respondent for the services rendered to date at the time she told him she had stopped the check, respondent said she might have, although that offer did not deal with the commitment the firm had made to

[2] 2T denotes the transcript of the District Ethics Committee hearing held on April 7, 1987.

represent her friend.

Once again, the panel accepts the testimony of the complainant as more credible than that of the respondent. The panel concludes that respondent acted deceitfully in not immediately returning to complainant her first check for $2,500 upon request, and in hinting to her concerning criminal prosecution when she first advised him she had stopped payment on the check. The panel concludes that respondent's comments regarding previous prosecution constituted, to the complainant, a threat of criminal prosecution. The panel has no evidence to indicate the extent of the services rendered by respondent to complainant's friend or whether it was possible for complainant's firm to withdraw from the representation without the permission of the court. Its conclusion that respondent violated R.P.C. 8.4(c) by acting deceitfully is based upon respondent's not immediately returning the check to complainant when she asked for it, and upon his acts of intimidation to the complainant by his threat of criminal prosecution in order to secure a replacement check for the one stopped by complainant.

The Caprario Matter, VII-86-12E

The complaint in this matter alleges violations of four of the Rules of Professional Conduct. These are R.P.C. 1.1, dealing with the competence of an attorney; R.P.C. 1.13 which deals with an attorney's diligence; R.P.C. 1.4 which requires that a lawyer keep a client reasonably informed, comply with reasonable requests for information and explain a matter to the extent reasonably necessary to permit the client to make informed decisions; R.P.C. 8.4(c) which speaks to dishonesty, fraud, deceit or misrepresentation.

The complaint alleges that in May 1985 complainant hired respondent to represent her in a sexual discrimination matter; that a counterclaim on behalf of complainant was not filed until July 19, 1985; that complainant received numerous telephone calls from respondent in which respondent discussed his own personal and financial problems; that although complainant agreed with respondent to pay a retainer of $5,000 plus a contingent fee of one-third of the monies collected on the counterclaim, she received a bill for further legal services from the respondent; that respondent was frequently unable to advise her of the status of her case or answer questions concerning the case; that respondent's correspondence was unclear and that interrogatories were not filed in a timely manner.

The evidence in this case, and the testimony taken before the panel, substantiates complainant's unhappiness with the quality and the caliber of the work performed by respondent. The evidence does not, however substantiate by a clear and convincing standard the charges of unethical conduct....

The Pugh Matter, VII-86-19E

The complaint alleges that the respondent represented the complainant, Frances Pugh, in a malpractice action. The matter was settled for the sum of $42,000. On or about March 17, 1986, a $42,000 check from the insurance company was mailed to the respondent, who then endorsed the check in the name of the complainant and added his own name to the endorsement. The complaint alleges a violation of R.P.C. 8.4(c) which proscribes[sic] dishonesty, fraud, deceit or misrepresentation by an attorney.

Ms. Pugh testified before the panel that her malpractice case had been settled by the respondent for $42,000 and that she had gone to the respondent's office and signed the necessary release. When the respondent received the check, he again called Ms. Pugh to come to his office and endorse it. She told him she could not leave work to do so. Respondent asked her if he could sign her name to the check and she said yes. However, she called him back immediately thereafter and instructed him not to sign the check, and that she would come up to his office to do so in person [2T73]. Instead, respondent arranged to meet her at a restaurant. She went to the restaurant with three friends, but respondent did not appear. She then went to his office with these friends and met with the respondent. He did not have the check and when she asked for some proof of its receipt, he showed her a deposit slip. He then grabbed the document from her hands and ordered complainant and her friends out of the office [2T75].

There is no allegation that respondent did not send to complainant the monies due her. He sent her a certified check for her share of the proceeds, and a disbursement statement showing the disposition of the total proceeds. Further, she said he called her and apologized for his behavior in the office.

Respondent's testimony differs somewhat from complainant's. He said that when he called complainant to advise her about receipt of the check, he also advised

that the banking laws of New Jersey permitted him to sign her name with her permission. She then authorized respondent to sign her name. According to respondent, Ms. Pugh did not call him back that day to tell him she changed her mind and wanted to sign it herself, but called him back the next day. He testified that the consecutive dates in question were March 18 and March 19, 1986. Respondent attempted to establish the two different dates by introducing into evidence time charge records (Exhibits P-4 and P-5). In fact, these time charge records appear to support the conclusion that Ms. Pugh called respondent to advise him of her desire to endorse the instrument on March 18 and not on March 19. However, the panel finds that it makes no difference which of the two dates Ms. Pugh called respondent, since he testified that he did not receive the settlement check until March 19, 1986.

In response to questions from the panel, the respondent testified that he had received permission from Ms. Pugh on March 18 to sign her name to the check, and did so on March 19, pursuant to that permission, but did not deposit the check until after Ms. Pugh called him back and said that she wanted to sign the check herself after all [2T117]. He further acknowledged that he deposited the check with only his endorsement of Ms. Pugh's name. The panel finds that in weighing the credibility of the respondent and the credibility of the complainant, it is the complainant who is telling the truth. We believe that the complainant called the respondent back and revoked her authorization to him to endorse her name to the check on the same day on which she had earlier given that authorization. Notwithstanding the withdrawal of complainant's authorization, respondent deposited the check. This factual pattern is clear even if we accept the testimony of the respondent. He deposited the check with his endorsement of complainant's name after she had withdrawn her authorization to him to sign it on her behalf.

The panel finds that this action by respondent violated R.P.C. 8.4(c). It is our opinion that this action involved deceit toward complainant, and also constituted fraud and misrepresentation to the insurance company that the proper endorsement was on the check at the time of its negotiation.

Pattern Of Neglect

The committee was unable to conclude that respondent exhibited a pattern of negligence in these five cases, in violation of R.P.C. 1.1(b). Even though his behavior did not create a pattern of neglect, respondent engaged in actions prejudicial to his clients in order to attempt to alleviate his financial situation. Although the committee could not find a violation of R.P.C. 1.1(b), it decided that respondent's conduct as a whole reflected a disregard for the integrity of the profession, even in the absence of violation of a specific disciplinary rule.

CONCLUSION AND RECOMMENDATION

Upon a review of the 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.

In the Puckett, Basaman, Hopkins and Pugh matters, respondent acted with deceit, contrary to R.P.C. 8.4(c), and placed his own financial concerns before the duty owed to his clients. In Puckett, respondent borrowed $5,000 from a client's son at a time when the law firm's ability to repay the loan was seriously in doubt, as it had already filed for reorganization under Chapter 11 of the Bankruptcy Code. Furthermore, respondent gave his client a check to repay the loan when there were insufficient funds in the firm's account to cover the check. Respondent owed his client a

duty of full disclosure respecting the risk associated with such a loan. He failed to meet this duty. In Basaman, he again borrowed $3,500 from a client without disclosing that his firm was under Chapter 11 of the Bankruptcy Code. In the Hopkins matter, he acted deceitfully when he did not return the $2,500 retainer to the client, who decided not to retain his services. He continued this misconduct by threatening criminal prosecution to intimidate the client into reissuing a $2,500 check to replace the initial retainer check on which she had placed a stop-payment order. Finally, in Pugh, in his attempt to receive his fee expeditiously, respondent signed his client's settlement check against the client's stated desire to sign the check herself. This constituted fraud and misrepresentation to the insurance company issuing the check, deceit toward his client, and a violation of the rule stated in In re Conroy, 56 N.J. 279 (1970) (attorney's practice of endorsing settlement checks issued in joint name of attorney and client unqualifiedly disapproved.)

In all these matters, respondent's own self-dealing led to his failing in his professional obligation to his clients. He failed to provide full disclosure when engaging in the loan transactions in the Puckett and Basaman matters. The Court has recently reaffirmed in a similar matter that an attorney should advise his client to obtain independent counsel when giving a loan for investment purpose to an attorney, especially since such outside counsel would probably recommend that the client obtain security for such a loan. Matter of Pascoe, 113 N.J. 229 (1988). See also

In re Bennett, 88 N.J. 450 (1982). Indeed, in another case involving money invested by a client in a company where the attorney was the sole shareholder, the Court stated "[t]his Court will no more tolerate the hoodwinking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer than it will outright misappropriation of funds." Matter of Smyzer, 108 N.J. 47 (1987), quoting In re Wolk, 82 N.J. 326 (1980). In this case, respondent took loans from his clients to save his own law firm, without advising them of its rapidly deteriorating financial condition, without telling them to seek independent counsel, and without giving them security for their loans.

Respondent's ethical derelictions were not confined to his deceit and misrepresentation. In Basaman, respondent failed to obtain injunctive relief on behalf of Mr. Basaman and his failure to serve all the defendants ultimately resulted in the dismissal of the cause of action due to the running of the statute of limitations. Such behavior constitutes gross negligence, in violation of R.P.C. 1.1(a), and failure to use diligence in the representation of his client, in violation of R.P.C. 1.3.

Finally, in the Hayakawa matter, respondent violated R.P.C. 1.15 by not holding the property of his client separately from his own funds. In Hayakawa, an associate of respondent set up a written retainer agreement with the client, specifying that $1,000 was to be placed in a trust account to be disbursed when future services were performed. Nevertheless, respondent deposited the

money directly into his business account and immediately used it to meet his cash flow deficit.

There is no logical distinction between misappropriating funds from a trust account and failing to deposit those trust funds into the appropriate trust account. The Board carefully reviewed the record to determine independently whether respondent knowingly misappropriated the Hayakawa retainer funds. Like the committee, the Board found insufficient evidence of a knowing misappropriation. The testimony in this case did not meet the clear and convincing standard with regard to respondent's knowledge of the retainer agreement. While it is clear that respondent acted improperly here, it cannot be said that respondent took clients' money "knowing that [he] had no authority to do so." Matter of Noonan, 102 N.J. 157 (1986).

Having determined that respondent was guilty of unethical conduct, the Board must recommend a quantum of discipline commensurate with the infraction. The Board is mindful that the purpose of discipline is not to punish the attorney, but to protect the public from the attorney who does not meet the standards of responsibility required of every member of the profession. Matter of Templeton, 99 N.J. 365, 374 (1985); In re Goldstaub, 90 N.J. 1, 5 (1982).

There are instances where deceit and misrepresentation, in conjunction with gross neglect, have warranted a suspension from the practice of law. See, e.g., Matter of Gill, 114 N.J. 246 (1989) (five-year suspension); Matter of Grabler, 114 N.J. 1 (1989)

(one-year suspension). In the Basaman matter, the combination of misrepresentation and gross neglect would justify a term of suspension. In addition, the Board finds three additional instances of misrepresentation and one instance of commingling funds which need to be considered, together with the Basaman matter, in determining the appropriate discipline.

Aggravating and mitigating factors are part of the circumstances surrounding a violation and are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 36 (1982). Respondent urged that his financial stress be considered as a mitigating factor against the seriousness of the charges against him. The Board disagrees that this is a mitigating factor. Respondent exhibited a willingness to close his eyes to accepted standards of professional conduct in order to protect his own financial success. The continued confidence of the public in the integrity of the bar requires that such an abrogation of duty be severely sanctioned. An attorney cannot put his own economic security above the rights of his clients.

Furthermore, the committee noted that respondent demonstrated a lack of candor before the committee. The Board agrees. This lack of candor, also evident at the Board hearing, constitutes an aggravating factor. In re Gavel, 22 N.J. 248 (1956). Finally, respondent has previously received a private reprimand, which also

must be considered as an aggravating factor.[3]

The Board considers respondent's conduct outrageous. Accordingly, the Board unanimously recommends that respondent be suspended for two years. In addition, the Board recommends that a further audit of respondent's accounts be performed by the Office of Attorney Ethics.

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

Dated: 11/7/95 By: Raymond T. Trombadore
Chair
Disciplinary Review Board

[3] Respondent was privately reprimanded on October 2, 1985 under DR 1-102(A)(4) and (6) for conduct involving deceit.