Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 96-086,
DRB 96-152, DRB 96-194

IN THE MATTER OF	:
STUART M. WHITEFIELD	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 19, 1996

Decided: December 18, 1996

Jean M. Ramatowski appeared on behalf of the District VIII Ethics Committee.

Respondent did not appear despite notice by publication.

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

This matter was before the Board based on two recommendations for disbarment filed by the District VIII Ethics Committee ("DEC")(DRB 96-086 and 96-152) and a disciplinary matter submitted to the Board on a default basis, pursuant to R. 1:20-4(f) (DRB 96-194). In Docket No. DRB 96-086, the eleven-count complaint charged respondent with various ethics violations. Although the DEC

planned to address four of the eleven matters at the November 6, 1995 DEC hearing (District Docket Nos. VIII-92-15E, VIII-93-48E, VIII-93-57E and VIII-93-72E), two grievants failed to appear and, thus, only two matters (VIII-92-15 and VIII-93-72E) were presented at the hearing. Despite notice to respondent, he too did not appear. In the two matters (counts two and eight of the complaint), respondent was charged with the following ethics violations: RPC 1.1(a)(gross neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to communicate); RPC 1.15 (safekeeping of a client's property) and RPC 3.2 (failure to expedite litigation) (count two); the same violations were charged in count eight, in addition to violations of RPC 1.5 (reasonableness of fees) and RPC 4.1 (truthfulness in statements to others). [As to the latter charge, the appropriate rule is RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation)].

In Docket No. DRB 96-152, respondent was charged in an eighteen-count amended complaint. The DEC had planned to address nine matters (Docket Nos. VIII-94-56E, VIII-94-69E, VIII-93-74E, VIII-94-71E, VIII-94-57E, VIII-94-72E, VIII-94-09E, and VIII-94-25E). Because, however, the grievants in Docket Nos. VIII-94-09E (Donaldson) and VIII-94-25E (Pollack) did not appear, those grievances were not considered. The amended complaint charged respondent with violations of RPC 1.1, RPC 1.3, RPC 1.4, RPC 1.5, RPC 1.15, RPC 3.2 and RPC 4.1 in six of the remaining seven counts and RPC 1.1, RPC 1.3, RPC 1.4 and RPC 1.5 in the last count.

In Docket No. DRB 96-194 respondent was charged in each of three counts to the complaint, with knowing misappropriation of

client funds, in violation of RPC 1.15(a), RPC 8.4(c) and the principles set forth in In re Wilson, 81 N.J. 451(1979) and In re Hollendonner, 102 N.J. 21(1985). Respondent never answered that complaint.

Respondent was admitted to the New Jersey bar in 1972. He was temporarily suspended by the Court on July 5, 1995. Respondent's prior discipline includes a one-year suspension on October 2, 1995 for misconduct in three matters, involving gross neglect, failure to communicate, unreasonable fees and misrepresentation. In re Whitefield, 142 N.J. 480 (1995). The Court imposed a three-month suspension, effective July 5, 1996, for respondent's lack of diligence, failure to communicate, prohibited business transaction with a client, commingling funds, failure to keep required records and negligent misappropriation. In re Whitefield, 146 N.J. 480 (1996).

* * *

A. DRB 96-086

Respondent failed to appear at the November 5, 1995 DEC hearing. The presenter noted that notice of the hearing had been mailed by regular mail to respondent's Metuchen office by letter dated September 29, 1995. As the letter was not returned, its receipt was presumed.

I. The Rountree Matter - Docket No. VIII-93-72E

Rhonda Rountree traveled from Highland Springs, Virginia, to testify against respondent. She retained respondent in September 1991 to represent her in a matrimonial matter involving a divorce, child support and alimony. She agreed to pay an initial retainer of $500 and to pay an hourly rate of $120. Rountree gave respondent $200 at their initial meeting. It is not clear whether she paid the balance of the retainer.

Rountree's husband owned a parcel of property with his former wife and aunt. Rountree's husband had abandoned her and her young child, leaving her with numerous bills. Rountree believed that she would be able to get money from her husband only if he sold his property. She believed that respondent had filed a lien against the property to secure her interests because she had signed a certification prepared by respondent to prevent the sale of the property. Respondent also prepared a complaint for divorce in Rountree's behalf.

Rountree attempted to contact respondent about the status of her case on numerous occasions. Whenever she would reach respondent, he would assure her that he would call her back after reviewing her file. He never did, however.

At some unknown point, Rountree discovered that her husband's property had been sold and that the proceeds had been divided among the owners. Rountree received nothing. When she contacted respondent about the sale, he claimed ignorance. Respondent told Rountree that he would investigate the matter and get back to her,

but failed to do so. Rountree never heard from respondent again.

In 1993, Rountree called the Somerset County courthouse to inquire about the status of her complaint. She was informed that her complaint for divorce had been filed at the end of 1991 and later dismissed for lack of "action." She was also informed that no lien had ever been recorded. As of the date of the DEC hearing, Rountree had not yet obtained a divorce because she was financially unable to secure the services of another attorney.

Rountree complained:

> I guess I'm really disappointed that I did what I thought was the appropriate measures [sic] to secure my situation and my child's situation. And the fact that Mr. Whitefield just let it go has cost me greatly. I have a child who is five. And, you know, I scrape by. And I can't do a whole lot as far as changing my job because I have child care, in addition to taking care of a child. And it has really caused a great hardship on me. I'm not only out of child support and a divorce and alimony, but I still have bill collectors calling me. And these are monies I can't handle by myself. I feel if Mr. Whitefield had put a little more effort into my case, that things would be a lot different for me and my child right now.
>
> [1T20-21[1]]

II. The Ciallella Matter - Docket No. VII-92-15E

Mary Ann Ciallella, a teacher, retained respondent in January 1990 to defend her in a criminal matter. She had been arrested for possession of a controlled dangerous substance (CDS) found in her car. CDS was later found with her belongings on school property.

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[1] 1T denotes the transcript of the November 6, 1995 DEC hearing.

Ciallella retained respondent at a rate of $100 per hour. Apparently she paid him an initial retainer of $1,000. The record is unclear about the subsequent amounts paid to respondent during the course of the representation. Respondent apparently received approximately $18,000 from Ciallella for fees and costs.

Ciallella claimed that respondent would call her periodically asking for additional sums for various purposes. For example, Ciallella gave respondent an additional $600 to have independent tests conducted on the seized CDS and $6,000 to obtain the release of her vehicle, which had been impounded by the police because of her arrest.

The State initiated proceedings to seize Ciallella's car, to which respondent failed to reply. In December 1990, Ciallella received a letter about a default and the subsequent loss of her car. When Ciallella confronted respondent with this information, he told her that that "was impossible."

Apparently, respondent never obtained an independent analysis of the CDS because he did not offer such a report or expert testimony at Ciallella's trial. Moreover, Ciallella never received any confirmation from respondent that independent testing had been performed on the CDS.

At Ciallella's trial, respondent failed to present any witnesses in her behalf and did not call Ciallella to testify. In short, respondent did not present a defense in Ciallella's case. As a result, Ciallella was convicted of possession of CDS.

Thereafter, respondent represented Ciallella in the appeal of

her conviction. Ciallella's father put up his house as collateral for her bail, pending the appeal. As to fees for the appeal, respondent sent a May 14, 1991 letter to Ciallella confirming the receipt of a $6,000 check from Ciallella's father for counsel fees and costs. Respondent claimed in the letter that, even though his total hours and costs exceeded the amount already received, he would not charge her for additional legal services through the pending appeal.

Ciallella lost the appeal. Thereafter, respondent met with Ciallella, her father and sister and informed them that, because there had been a dissent in the appellate division decision, he could file an appeal with the New Jersey Supreme Court. Respondent told them that it would cost an additional $50,000 to file the appeal. When Ciallella's sister told respondent that they first wanted to get a second opinion, respondent lowered his fee to $30,000, subject to their immediate decision to appeal. Respondent told them that he needed the money "up front."

After Ciallella's sister contacted another attorney, she learned that there was no dissent in the appellate division decision and, therefore, no right to appeal. Ciallella was incarcerated on May 11, 1992.

The most serious charges in this matter involved Ciallella's pension benefits. When Ciallella initially retained respondent, he informed her that the State could "confiscate" her pension. He told Ciallella that she should immediately "withdraw her pension" and that he would obtain the necessary papers to that end.

Respondent added that, since the State could seize her funds, Ciallella should give him the authority to have the check sent to him, whereupon he would notify her of the receipt of the check.

Ciallella testified that respondent brought a number of papers to her apartment. Although she signed the papers, she was unable to read their contents because of the way respondent had folded them. She did not ask to read the documents because she relied on respondent to protect her interests. Ciallella believed that she was signing only pension benefits withdrawal forms and a power-of-attorney to respondent authorizing him to receive the funds and to hold them in escrow. The funds amounted to approximately $7,800.

Ciallella claimed that, beginning November 1990, she called respondent every few weeks to determine if he had received the check. Initially, respondent told her that there had been no news. Eventually, respondent claimed that he would have to take the matter to court because the State was probably holding up the release of the funds. Even after Ciallella was incarcerated, respondent continued to represent to Ciallella's father and sister that he would take care of the pension matter and would also get Ciallella's car released. As late as May 1992, respondent represented that he still had not received Ciallella's pension check. Eventually, while Ciallella was in jail, her sister and her father went to the Division of Pensions to determine what had become of Ciallella's pension funds. There they learned that respondent had received Ciallella's check in March 1991 and had apparently forged her signature on the check. The check had been

endorsed "for deposit only to Stuart M. Whitefield."

At the time Ciallella signed the power-of-attorney, respondent also had her sign a paper stating as follows:

> This will confirm that the undersigned, Mary Ann Ciallella hereby agrees to the release of pension monies due to her from the Teacher's Pension and Annuity Fund to [respondent] to be used toward legal fees and costs previously incurred and to be incurred in the future . . . .
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> [Ciallella Exhibit C-7]

According to Ciallella, she was not aware that she had signed the document. Moreover, she and respondent had never agreed or even discussed that the funds would be used for legal fees.

In a letter to respondent dated July 22, 1992, Ciallella wrote:

> This matter deeply saddens me since I believed whatever you told me. You coerced me into submitting for withdrawal of my pension fund because you said the Prosecutor's Office was going to seize it when all along it was not them I needed to fear but instead it was you. As a result not only was my career and life ruined but that pension fund represented 14 years of investment toward retirement, which you have unlawfully taken away.
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> [Ciallella Exhibit C-13]

* * *

As to the Rountree matter, the DEC found clear and convincing evidence of unethical conduct. The DEC concluded that, although at some point in time respondent filed a divorce complaint, he took no further action in the matter, thereby causing the complaint to be dismissed. He also failed to take any action to preserve a piece of property that could have comprised a part of the matrimonial

estate, all the while misleading his client that he was protecting her interests. The DEC found violations of RPC 1.1 (a) (gross neglect); RPC 1.1(b)(pattern of neglect); RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate). The DEC did not find a violation of RPC 1.5 (reasonableness of fees), reasoning that respondent had performed some services, including the preparation and filing of the complaint and the initial conference with Rountree.

The DEC found that respondent's inaction leading to the dismissal of the complaint and his failure to pursue a motion for pendente lite support, which the DEC believed should have been prepared, supported a finding of a violation of RPC 3.2 (failure to expedite litigation).

Finally, the DEC found a violation of RPC 4.1 (truthfulness in statements to others), rather than RPC 8.4(c), for respondent's misstatements to his client about the status of the litigation.

In the Ciallella matter, the DEC found that respondent's failure to oppose the State's efforts to seize Ciallella's automobile, which efforts led to a default, violated RPC 1.1(a) and (b) and RPC 1.3. The DEC also found a violation of RPC 1.4, based on respondent's failure to reply to his client's requests for information about the matter.

The DEC concluded that respondent misrepresented what was to be done with Ciallella's pension monies. The DEC also found that, after respondent obtained the money, on several occasions he claimed that he was still investigating the matter, improperly

implying that he had not yet received the monies. The DEC concluded that the pension monies were not to be applied to legal fees and, therefore, had improperly "made their way to [respondent's] own personal hands," in violation of RPC 1.15.

Although the DEC did not find a violation of RPC 3.2, it found clear and convincing evidence of a violation of RPC 4.1 because of respondent's express or implied statements to Ciallella and her family that he had withdrawn the pension funds to avoid confiscation by the State, when, in fact, he applied them to his legal fees. The DEC also found that, after March 1991, respondent falsely told Ciallella and her family that he was working to obtain her pension funds and that he was at a loss to explain why the State had not yet released the money. In addition, the DEC concluded that respondent misrepresented that he was working to get Ciallella's car back when, in fact, there had been a default in the matter. Finally, the DEC found that respondent misrepresented to Ciallella and her family that there was a right to appeal to the Supreme Court as a result of a dissent in the Appellate Division's opinion.

The DEC found that Ciallella was a credible witness and that respondent's conduct was part of an ongoing scheme to gain access to Ciallella's pension funds.

In light of the ethics offenses in these two matters and respondent's prior misconduct, the DEC recommended that respondent be disbarred.

B. DRB 96-152

Respondent did not appear at the DEC hearing on January 16, 1996, filing an answer only as to two of the eighteen counts in the complaint. The presenter noted that respondent had been served with notice of the hearing in this matter, without detailing the steps that had been taken in this regard. At the time that the notice was sent, however, respondent's office had already been closed because of his suspension.

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I. The Gochal Matter - Docket No. VIII-94-56E

Respondent had represented Jill Gochal in a custody battle. According to Gochal, she had been awarded only weekend visitation rights, because respondent had "botched" the matter by failing to call witnesses in her behalf. Nevertheless, in December 1993 she paid respondent a $1,500 retainer to file an appeal.

Gochal began calling respondent early on about the status of her appeal. She was never able to speak with respondent. Respondent's secretary always informed Gochal that he was unavailable. As of February 1994, Gochal claimed she was calling respondent's office almost daily. Eventually, Gochal called the court and learned that respondent had not filed any papers in her behalf. Thereafter, Gochal sent respondent two letters informing

him that she no longer wanted him to represent her and that she wanted her file and her retainer returned. Gochal never heard from respondent and did not get her file or retainer back.

II. The Arbelo Matter - Docket No. VIII-94-69E

Hector Arbelo, Sr. retained respondent to help him in two matters: (1) a motor vehicle accident involving his wife and (2) a dog bite. As to the motor vehicle accident, Arbelo gave respondent information about the accident, including photographs of the accident scene. Apparently, respondent did not prepare a written retainer agreement. He represented to Arbelo, however, that he would handle the matter.

Several months after their initial meeting, Arbelo called respondent about the case and was informed it was "not yet going to court." Thereafter, Arbelo telephoned respondent approximately ten to fifteen times about the status of his case. He never received any information. Arbelo claimed that he only spoke to respondent a couple of times and "just got the run around." On several occasions, although Arbelo had made appointments to meet with respondent at his office, Arbelo was left sitting there. Respondent did not show up for the meetings. On the few occasions that Arbelo was able to speak with respondent, respondent claimed either that he was waiting to hear from the other party or that Arbelo's case had been filed and that respondent was waiting for it to proceed.

Arbelo never learned the status of his case. He last tried to contact respondent about a year before the DEC hearing, but respondent never returned his call. The record does not disclose the ultimate resolution of this matter.

* * *

Respondent agreed to represent Arbelo in connection with injuries sustained as a result of a dog bite. Although Arbelo never saw any documentation in the matter, he was told that the case had settled and was given a check for $1,200. While the proceeds of the settlement apparently came from an insurance company, Arbelo never saw the check from the company. Respondent did not give Arbelo an accounting of the settlement proceeds or any documentation relating to the case. Moreover, respondent never explained to Arbelo what his fee was or informed Arbelo of the amount he retained from the settlement. Arbelo claimed that one of the secretaries from respondent's office informed him that his case had settled for $5,000.

III. The Feneis Matter - Docket No. VIII-93-74E

Thomas Feneis retained respondent in 1985 to start foreclosure proceedings on a property in Freehold Township for which Feneis had purchased a tax lien in 1977. For nine years, respondent gave Feneis the "run around." Respondent called Feneis every so often

requesting him to complete more paperwork or to "re-sign documents." Respondent told Feneis on several occasions that they had court dates, only to inform him later that the judge had adjourned the matter. Among respondent's excuses for the delay was that the judge before whom the matter had been scheduled had been transferred and they had to start the case all over again. At one point, respondent told Feneis that the case had been assigned to a judge whose prior retirement had already been announced in a local newspaper. When Feneis confronted respondent's secretary about that fact, he was told that the matter was still scheduled to proceed. He later received a message on his answering machine that the matter had again been postponed.

Respondent had properly represented Feneis in other matters. According to Feneis, however, in this matter he "stupidly" kept trying to deal with respondent. Feneis stated, "He's a nice guy personally and he could talk you into things." 2T29[2]

Finally, respondent called Feneis and informed him that "the papers" had been signed and that Feneis was getting a large discount on the fee. Respondent assured Feneis that, if he sent him $350, when respondent returned from his vacation "everything would be ready." Feneis sent the $350 to respondent. When respondent returned from vacation, Feneis was informed that "the papers" were not ready. Thereafter, Feneis made repeated telephone calls to respondent and sent him facsimile transmissions, but received no reply.

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[2] 2T denotes the transcript of the January 16, 1996 DEC hearing.

When Feneis finally called the Monmouth County Clerk about the status of his matter, he learned that the file number that appeared on his papers was not a number used by that court.

After nine years, Feneis finally retained a new attorney to resolve the matter.

IV. The Elliott Matter - Docket No. VIII-94-73E

Richard Elliott, respondent's friend, retained respondent to represent him in several matters. At one point, Elliott hired respondent to conduct a series of real estate transactions spanning a two-year period. The transactions involved the sale of a house, purchase of another house and refinancing of a mortgage. Elliott realized $18,000 from the sale of his house.

While respondent was holding Elliott's proceeds from the closing, he approached Elliott about investing the money through an investment group of which he was a member. Elliott agreed. He gave respondent an additional $15,000 to invest. Respondent did not give Elliott any documents to sign. He told Elliott that the money would be invested in a beauty supply company.

Thereafter, respondent gave Elliott several checks as a "return" on his investment. All but two of the checks bounced. Elliott seemed to recall that the checks had been drawn on respondent's business account. When Elliott confronted respondent about the bounced checks, respondent explained that there had been a "mix-up" with his bank accounts. According to Elliott,

respondent "made good" on only one of the checks. As to the other bad checks, respondent informed Elliott that he could not return the rest of the money because he was having a hard time with "the other people," presumably referring to other investors.

As of the date of the DEC hearing, respondent had not returned Elliott's money.

Elliott never received any verification of where his money had been invested. Elliott claimed that, when he questioned respondent about the investment, respondent "put him off."

* * *

Elliott also retained respondent to represent him in connection with criminal charges involving the illegal transfer of a firearm. As a result of the charges, Elliott's shotgun was confiscated. After Elliott was convicted, respondent agreed to file an appeal at no charge. The appeal, however, was dismissed because respondent failed to file a brief.

Respondent misrepresented the outcome of the appeal to Elliott. Specifically, respondent told Elliott that he had won the appeal but that, nevertheless, he would have to retry the case if he wanted his shotgun returned. Respondent tried to convince Elliott that it was not worth pursuing the matter. Eventually, Elliott contacted the court and learned that his appeal had been dismissed earlier. When he confronted respondent with that information, respondent had no explanation for what had occurred.

* * *

Elliott also retained respondent to represent him in connection with a work-related injury that occurred out-of-state. Respondent decided not to file suit out-of-state. He told Elliott that he would file a worker's compensation case in his behalf. According to Elliott, respondent notified all interested persons in the suit, including Elliott, the hospital and the doctors, that a suit had been filed. Respondent also informed Elliott that all of his medical expenses would be covered and that the money was on its way.

When Elliott inquired about the status of his worker's compensation claim, respondent told him that the Division of Worker's Compensation was giving him a hard time. Elliott eventually learned that respondent had never filed a claim in his behalf. Thereafter, Elliott retained new counsel. The record is silent about the ultimate outcome of the matter.

Elliott testified that he was on the verge of bankruptcy because of respondent's inaction in the worker's compensation matter and the fact that he was out of work for fifteen weeks due to necessary surgery from his injury.

V. The Leika Matter - Docket No. VIII-94-71E or 70E

Walter Leika, Jr. retained respondent in 1988. Leika had entered into a contract to purchase a house. When the sellers

refused to make certain repairs, Leika decided to cancel the contract. Because the sellers refused to refund Leika's $6,000 deposit, Leika retained respondent to sue the sellers. Apparently, respondent failed to take any action on Leika's behalf and the sellers sued Leika for breach of contract. Respondent failed to defend the suit and a default judgment was entered against Leika. Leika did not learn of the judgment until several years later. In the interim, respondent kept creating excuses for the delay in Leika's case. These excuses included that the judge was on vacation, the case kept getting postponed, the trial date had been adjourned, the court would not release the money, the realtor was in Florida and the sellers had moved. Eventually respondent told Leika that, if he "signed a paper" claiming that he needed the money because of an injury, the court would release the money.

After three years elapsed, Leika's father went to the courthouse to get a copy of Leika's file, at which time he discovered the default judgment. When Leika confronted respondent, respondent denied knowledge of the judgment. However, a letter in Leika's file, dated May 1989, indicated that the defendant's motion to vacate the judgment had been withdrawn by the attorney for the defendant (respondent).

As late as May 1995, respondent was still misrepresenting that Leika's money was available and was being held by the court.

Leika testified that, as a result of respondent's conduct, he lost his $6,000 deposit, the $350 fee to respondent and the costs and expenses involved in the mortgage application process. Leika

obtained a judgment against respondent for $6,000 plus interest. It is not known whether Leika was able to collect the judgment.

VI. The Burke Matter - Docket No. VIII-94-57E

Brenda Burke retained respondent in 1993 to start bankruptcy proceedings in her behalf. She paid respondent a $500 retainer. Respondent advised Burke not to pay her mortgage during the pendency of the bankruptcy. He told her to give him a check each month, whereupon he would pay Crestmont Federal Savings, her mortgage company. Up until that time, Burke had been current with her mortgage payments and, in fact, had hand-delivered them to the bank.

Pursuant to respondent's advice, Burke gave him a check dated September 30, 1993 payable to Crestmont, in the amount of $1,000. Respondent informed Burke that the bank would not accept the check as drafted; she had to make the check payable to "Stuart Whitefield in trust." Over the course of eight months, Burke gave respondent checks totalling $11,600, at all times believing that the monies were being applied toward her mortgage payments.

According to Burke, and apparently sometime after March 1994, the county sheriff come to her house with a notice of sheriff's sale. Thereafter, Burke learned from the bank that respondent had not made any mortgage payments in her behalf. When she confronted respondent, he told her not to worry about it. He assured her that he would handle the foreclosure and that the bank's figures were

wrong.

Respondent also advised Burke that, in order to avoid foreclosure, her parents should buy her house. To that end, he drafted a contract of sale listing a purchase price of $150,000. (Burke claimed that her mortgage balance was only $85,000 at the time.) After Burke's parents executed the contract, she felt that the entire situation was "shady." Thus, she did not seek respondent's services again and hired another attorney to help her out of the foreclosure. Burke did not sell her house and borrowed $30,000 from her family to avoid foreclosure on her property.

Eventually, respondent returned to Burke $9,000 from the $11,600 he had taken, allegedly to pay the mortgage. He retained the remainder as his fee. Burke asked for an explanation for the additional fee, as respondent had already been paid. Respondent never gave her any explanation, accounting or bill for his services. Thereafter, Burke was only able to speak to respondent's secretary and has never obtained an explanation for respondent's failure to pay her mortgage, as promised.

VII. The Miller Matter - Docket No. VIII-94-72E

Respondent had satisfactorily represented Kenneth Miller in several matters. At some point, when Miller's mortgage was seven months in arrears, he retained respondent to represent him in bankruptcy proceedings. Respondent informed Miller that he had been in contact with Miller's mortgage company and that Miller

should send him a check for $4,000 to make the payments current. Although Miller sent respondent the $4,000, respondent failed to send it to the mortgage company. Miller was later notified by the mortgage company that his mortgage was in further arrears. On several occasions thereafter, Miller attempted to contact respondent, but was only able to speak with respondent's secretary. Miller ultimately retained another attorney. Miller had fallen so far behind in his payments, however, that he lost his residence through foreclosure proceedings.

At some point, respondent informed Miller that his monies were being held in escrow. However, Miller was not able to recover that money until he sued respondent.

* * *

The DEC found that respondent's handling of the above cases indicated a pattern of neglect and gross neglect. The DEC noted that all of the grievants had testified about respondent's failure to advise them of the status of their cases, failure to return phone calls, failure to answer their inquiries, failure to furnish documentation about their cases even when specifically requested to do so, failure to reply to opposing parties or to do so in a timely fashion and failure to take necessary actions to resolve their cases. The DEC concluded that respondent's conduct in all of the matters constituted violations of RPC 1.1, RPC 1.3, RPC 1.4, RPC 3.2 and RPC 4.1 [more appropriately, violations of RPC 8.4(c)].

The DEC also found that respondent's actions with respect to the safekeeping and/or disbursement of his clients' funds was egregious. Gochal paid respondent $1,500 to take an appeal, which he failed to do and never returned her money; Arbelo received some money from respondent, but was not given an accounting of the funds; Elliott gave respondent a substantial sum of money to invest, for which he received no paperwork, practically no earnings and no refund of his funds; and Burke and Miller gave respondent money that they believed would be forwarded to their respective mortgage companies, but to their detriment was not. The DEC found that respondent returned only a portion of Burke's money, without an accounting, and that Miller never received any of his money back. The DEC found that respondent's conduct in this regard constituted violations of RPC 1.5, RPC 1.15 and RPC 4.1.

The DEC also found violations of RPC 1.3, RPC 3.2 and RPC 4.1 for respondent's misrepresentations and deceit. In both the Gochal and Feneis matters, he informed his clients that he had taken various actions and filed documents with the courts, when, in fact, he had not done so. Similar misrepresentations also occurred in the Elliott and Leika matters.

Considering the totality of respondent's actions and prior discipline, the DEC recommended that he be disbarred.

C. DRB 96-194

A complaint was served on respondent by the Office of Attorney Ethics ("OAE") on March 19, 1996 by regular and certified mail,

return receipt requested. The certified mail was returned to the OAE as unclaimed, on April 7, 1996; the regular mail was not returned. Respondent failed to reply to the complaint. The matter was thereafter certified directly to the Disciplinary Review Board on May 6, 1996 for the imposition of sanction, pursuant to R. 1:20-4(f)(1).

R. 1:20-4(f)(1) provides that a respondent's failure to file an answer "shall be deemed an admission that the allegations of the complaint are true and they provide a sufficient basis for the imposition of discipline."

The facts alleged in the complaint and deemed admitted are as follows:

I. The Stahon/Pender Matters - Docket No. XIV-95-315E

In June 1991, Lester and Patricia Stahon retained respondent to represent them in the sale of their business, Pat's Pizza. The prospective purchasers Bruce and Cynthia Pender gave respondent $10,000 as a deposit for the purchase of the business.

Respondent deposited the money in his trust account. The sale did not go through and litigation ensued concerning the return of the deposit. Neither of the parties had authorized respondent to disburse the $10,000. Nevertheless, between July 5, 1991 and July 8, 1992, respondent disbursed the entire $10,000 to himself by issuing eight separate checks.

II. The Reardon Matter Docket No. XIV-96-034E

In February 1993, Dennis Reardon retained respondent in connection with placing his parents, Ella and Frank P. Reardon into a nursing home. Checks received in behalf of the Reardons' and deposited into the Reardon account or misdeposited into other accounts were as follows: 1) on February 27, 1993, $70,875.77 was deposited in the Reardon account; 2) on March 11, 1993 $9,000 was deposited into the Stahon account; 3) on June 13, 1993, $7,640.96 was deposited into the Grieco account; and 4) on May 28, 1993, $2,745.56 was deposited in the Reider account. Respondent utilized all of these funds for his own purposes.

All in all, respondent misappropriated $90,262.29 from the Reardon funds.

III. The Noske Matter - Docket No. XIV-96-043E

On or about June 15, 1994, Winfried Noske gave respondent a check in the amount of $20,000 to be held in trust on behalf of Elke Lohman for use in a real estate transaction. On June 16, 1994, respondent misdeposited the check into the Elizabeth Zydzik account. On August 10, 1994, Noske gave respondent another check in the amount of $30,000, again to be held in trust for Lohmann. Instead, respondent misdeposited the funds in the Reardon account on August 11, 1994.

On October 3, 1994, Noske gave respondent a check for $108,000, to be held in trust for Wilfried Voight. On that same

date, respondent misdeposited the funds into the Reardon account.

On October 3, 1994, Noske gave respondent a check for $41,782.85, to be held in trust for the purchase of property by Noske. Instead, respondent deposited it in the Reardon account.

Respondent misappropriated for his own use $83,210 of the Noske funds that were improperly deposited into the Reardon account and $6,500 of the $20,000 improperly deposited into the Zydzik account.

Pursuant to R. 1:20-4(f)(1), DRB 96-194 was reviewed without hearing on the written record by the Board.

Notice of the Board hearing was made by publication in DRB 96-086 and 96-152. Respondent failed to appear before the Board on the scheduled hearing date of June 19, 1996.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusions of the DEC in DRB 96-086 and DRB 96-152 that respondent was guilty of unethical conduct is supported by clear and convincing evidence. The Board has further deemed the allegations of the complaint in DRB 96-194 admitted, and the charges proved by clear and convincing evidence.

The most serious matters before the Board are the Ciallella, Stahon, Reardon and Noske matters. In Ciallella, the DEC found that the client, her sister and father, were all credible witnesses. The testimony, therefore, established that respondent

participated in an ongoing scheme to gain access to Ciallella's pension funds. At the inception of their legal relationship, respondent misrepresented to his client that the State could confiscate her money. Even if that were so, he then counseled her to improperly frustrate the State's efforts in that regard, by having him hold her money until some future time. In furtherance of respondent's scheme, he had Ciallella sign numerous papers, including the pension withdrawal forms and a power-of-attorney allowing him to gain access to the pension check. Ciallella testified that, when respondent came to her apartment to have her sign a number of papers, he did not explain what the documents were. Some of them were not filled out, since respondent was to complete them at a later time. Ciallella did not read the documents, but just signed them, as instructed, because she trusted respondent to protect her interests.

Respondent must have anticipated that he might run into problems in the future. He, therefore, either had Ciallella sign a blank sheet of paper or folded the paper in such a fashion that Ciallella did not know that she empowered respondent to retain her pension as his fee.

Respondent's subsequent conduct bolstered Ciallella's testimony that she did not know of or agree to respondent's use of her pension as legal fees. As early as November 1990, she began calling respondent to learn whether he had obtained her pension funds. He never mentioned, either at that point or later, that he intended to use them as legal fees. It was only during Ciallella's

incarceration that her family travelled to the Division of Pensions in Trenton and discovered that respondent had been in possession of Ciallella's funds since March 1991, and had negotiated Ciallella's pension check without her knowledge or consent. Moreover, in the course of respondent's continued misrepresentations to Ciallella about the status of her funds, in May 1991 (after secretly taking her pension funds), he told her in writing that, even though his total hours and costs exceeded the amount he had received as a fee, he would not charge her for additional legal services through her pending appeal.

In addition to misappropriating Ciallella's pension funds, respondent also took from her $600 for an analysis and report that he apparently never obtained and $6,000 to challenge the State's proceedings to seize her automobile. He failed to take action in either regard. To further exacerbate the situation, respondent attempted to defraud Ciallella out of an additional $30,000 for an "appeal as of right" that did not exist. Respondent's conduct in this matter alone requires disbarment, under In re Wilson, 81 N.J. 451 (1979) and its progeny.

Respondent's misconduct in the three matters now before the Board included misappropriation of client funds in four cases (Ciallella, Stahon, Pender, Reardon and Noske), together with numerous instances of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, misrepresentations to clients and others, and charging unreasonable fees. Clearly, respondent's misconduct in these matters requires disbarment. In

re Wilson, 81 N.J. 451(1979).

Based on the foregoing, the Board unanimously recommends respondent's disbarment. Two members did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/18/86

LEE M. HYMERLING
Chair
Disciplinary Review Board