SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-361

IN THE MATTER OF

S. DORELL KING

AN ATTORNEY AT LAW

Decision

Argued: November 20, 1996, December 18, 1996, and January 23, 1997

Decided: April 8, 1997

Jay M. Silburner appeared on behalf of the District VB Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"). The complaint charged respondent with various infractions arising out of grievances filed in three separate complaints.

Respondent was admitted to the New Jersey bar in 1980 and is engaged in the practice of law at 81 Second Street, South Orange, New Jersey. Respondent has no prior ethics history.

* * *

This matter was originally scheduled for November 20, 1996. At the beginning of the hearing, respondent requested an adjournment in order to file a brief, notwithstanding that the letter scheduling the Board hearing gave respondent an opportunity to file a brief by no later than November 4, 1996. The Board granted respondent's request, adjourned the case to December 18, 1996 and required respondent to file any brief by December 4, 1996. The Board did not require the presenter's presence beyond the November 20, 1996 hearing and the presenter elected not to appear on the adjourned dates. No brief was filed until respondent appeared at the December 18, 1996 hearing with her brief in hand. After a short deliberation, the Board accepted the brief and adjourned the matter to January 23 ,1997, in order to review the brief prior to hearing the case.

On January 23, 1997, respondent appeared pro se and requested that a supplemental letter-brief, delivered to Board counsel minutes before the hearing, be considered. That request was denied.

THE BRANCH GRIEVANCE - District Docket No. VB-94-8E

The complaint charged respondent with violations of RPC 1.3 (lack of diligence); RPC 1.4 (failure to communicate); RPC 1.5 (unreasonable fee); RPC 8.1(b) (failure to cooperate with the disciplinary authorities); and RPC 1.1(a) (gross neglect).

Priscilla Branch ("grievant") retained respondent to represent her son, Damon Wise, in a criminal matter in January 1992. Mr. Wise was in the Essex County jail at the time and was represented by a pool attorney from the Public Defender's Office. Grievant executed an Agreement

to Provide Legal Services on January 11, 1992. At that time, respondent quoted a $10,000 fee, of which grievant paid $4,000 upon signing the retainer.

At the DEC hearing held on July 13, 1995, grievant testified that respondent was to send a letter to the pool attorney stating that respondent was her son's new attorney. Respondent never did so.

Grievant recounted instances when her son called her from jail. Grievant tried unsuccessfully to conference those calls with respondent's office. It became apparent to grievant in the summer of 1993 that respondent was not accessible or responsive to her repeated inquiries about her son's case. When grievant tried to disengage respondent, respondent allegedly told grievant that only her client, Damon Wise, could discharge her.

Grievant then contacted the DEC and was informed that she could terminate respondent's representation. By letter dated September 1, 1993, grievant advised respondent that her services were no longer needed. Grievant attempted unsuccessfully to "fax" the letter to respondent's office on numerous occasions, made numerous unanswered telephone calls to her office and ultimately sent the letter by certified mail, returned receipt requested. The letter came back undelivered.

Thereafter, grievant visited respondent's office and was told at the front desk that respondent was not in. Grievant was not allowed past the front desk to determine if, in fact, respondent was in the office.

Grievant then contacted the pool attorney who had initially represented her son, in an effort to obtain information from him. The pool attorney set down his version of the events in an April 25, 1994 letter to the DEC:

> On May 22, 1992, I was assigned to represent Mr. Wise as pool attorney. . . . Mr. Wise was indicted on another matter subsequent to that date. I was advised by Mr. Wise that his mother had retained another attorney who was supposed to handle both cases. The retainer fee was $4,000. I do not know if a Substitution of Attorney was ever filed. I attempted to get information from Judge Fineberg's clerk about the status of the case with no success. Apparently nothing was done and I remained on the case. On January 4, I started the trial. Mr. Wise was acquitted of all charges. The aggravated assault is still pending. I was told by Mr. Wise that his mother repeatedly attempted to have her retainer returned with no luck. . . .

Grievant further testified that respondent did not return to her any of the $4,000 fee, wrote no correspondence to her or Mr. Wise, filed no substitution of attorney and, to grievant's knowledge, did no work whatsoever on the file.

THE FRANKLIN MATTER - District Docket No. VB-93-33E

The complaint charged respondent with various violations emanating from four separate lawsuits handled by respondent on behalf of Gwendolyn Franklin ("grievant"). Two of the lawsuits related to a criminal altercation; the other two related to an automobile accident.

Count One

Count one charged respondent with violations of RPC 1.1 (a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); and RPC 1.5 (unreasonable fee).

In April 1991, grievant retained respondent to defend her in four separate criminal complaints pending in Essex County. Initially, grievant signed a retainer agreement requiring a $750 fee. Less than a week later, on April 29, 1991, grievant executed an Agreement to Provide Legal Services

Regarding Criminal Indictable Matter, requiring a fee of $7,500. Grievant's version of the facts is essentially as follows:

Grievant's office was burglarized a week after grievant resigned from her position there. Her supervisor accused her of the burglary. When grievant attempted to pick up her last paycheck, a stranger followed her to her car and asked her to shut off the engine. Grievant drove off and the stranger grabbed her through the car window, hanging onto grievant until she sideswiped a bus. The stranger lost his balance and the car connected to the bus for a distance before it stopped. The stranger ran toward her with a gun, came to her car window, and told grievant and her two female friends, at gunpoint, to get out of the car. He notified them that they were under arrest. Grievant was handcuffed, and the Newark police arrived.

The man told the Newark police that he was a security guard and that grievant had stolen $30,000 in office equipment that was allegedly in her car. Grievant was arrested and processed. It was later learned that the man chasing her was an off-duty Hudson County police officer and part-time security guard. Grievant was incarcerated for approximately one day before posting bail.

Grievant recalled having only two conversations with respondent over the entire time that her matters were pending. Respondent was to file a civil suit, in addition to defending grievant against the criminal charges. The civil suit, which was filed, named as defendants the City of Newark, the Newark Police Department, the Hudson County Police Department, the individual security guard/police officer and others.

Grievant tried on numerous occasions to contact respondent after the initial conversations, but was unable to reach her. Grievant finally retained another attorney, Joel C. Rinsky, Esq., to investigate the matter and proceed in the criminal matter as well as in the civil suit.

According to Rinsky, he determined that grievant would be better served by another attorney in the criminal matter and referred her to William Tamburri, Jr., Esq. Tamburri, in turn, testified that his initial investigation revealed no appearance by respondent in the criminal matter. Essex County had unilaterally downgraded the charges and moved them to the City of Newark municipal court, where they were dismissed for lack of prosecution. Apparently, respondent never notified grievant of any of these events. According to Tamburri, respondent had no apparent involvement in the case whatsoever.

Count Two

Count two of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); RPC 1.2 and RPC 1.3 (for failure to release the file to the new attorney); RPC 8.1(b) (failure to cooperate with the disciplinary authorities); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

According to grievant, on December 6, 1990 she was involved in an automobile accident. At respondent's request, she removed the case from her original attorney, as respondent indicated that it made sense for respondent to handle all of grievant's pending legal matters. Grievant testified that there was no retainer agreement and that respondent took the case on a contingent fee basis. Grievant complained that from the time her file was forwarded to respondent she could not get information regarding the status of the case. In early 1993, grievant retained Rinsky to represent her in the matter.

Rinsky testified at the DEC hearing about repeated attempts by telephone and by mail to obtain the file from respondent, with no success. He later determined that respondent had filed a complaint in December 1992 and that, as of March 1993, no summons had been issued. Rinsky persevered in his attempts through much of 1993, but on February 22, 1994 he sent his last request for the file.

Finally, Rinsky filed a motion to compel the turnover of the file. The motion was returnable on March 4, 1994. Respondent filed a certification in opposition to the motion (it is unclear if the motion was ever ruled on) and returned the file to Rinsky shortly thereafter.

Count Three

Count three of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(a) (failure to communicate).

At the time grievant retained respondent to defend her in the criminal matters referenced above, respondent was also retained (on a contingent fee basis, according to grievant's testimony) to institute a civil suit against the various municipalities and police officers involved in the incident at her former place of employment.

Grievant testified that her civil rights had been violated, she had been falsely arrested, had not been advised of her rights, and had valid claims against various parties as a result of the incident. Grievant testified that respondent failed to institute the action or to notify the municipalities, as required by law.

Grievant was so displeased with the lack of communication she received in the criminal matter that she retained Tamburri to make inquiries regarding the matter. His first meeting with grievant

occurred on April 9, 1993. The incident had occurred on April 19, 1991. Tamburri quickly realized that approximately one week remained before the statute of limitations expired.

Tamburri testified that he attempted to reach respondent to determine if she had filed a complaint on behalf of grievant. He telephoned her office and was told that she was out of the country and would not be returning until the following week. He filed suit and obtained a docket number.

On April 21, 1993, Tamburri sent a letter to respondent advising of his representation, confirming that he had tried to reach her by telephone and asking her if she had filed tort claim notices against the public entities in the matter. His inquiry went unanswered.

Tamburri then filed a motion to file the notice of tort claims. Before it was heard, he was contacted by an attorney for Hudson County, who advised him that respondent did not properly file a tort claim notice against either Hudson County or the City of Newark.

Subsequently, Tamburri determined that respondent had filed a suit in the matter, which had been dismissed on April 6, 1992 for lack of prosecution. With no help from respondent or the benefit of her file, Tamburri was able to file tort claim notices based on the dismissal.

Tamburri recounted his frustrations in trying to correspond or otherwise communicate with respondent in the following testimony regarding his efforts to obtain the file:

> I wrote to her on July 1, 1993, and I last wrote to her on June 3, 1994. The reason for the last letter was that she had sent a letter to. . . . Ms. Franklin referring to a letter to Mr. Rinsky in which she indicates Mr. Rinsky was taking over one of the files and Mr. Tamburri was representing her as to the other matter, and there is a cc on it to me enclosing the originally executed substitution of attorney on the Hudson County case with the note on the bottom of her letter.

[Respondent's note reads]:
I believe I did provide this to you Mr. Tamburri. Mr Rinsky indicated on February 22, 1994, you would be forwarding confirmation of your representation of Ms. Franklin in this matter. To date I have not received any phone calls and/or correspondence verifying this fact. Kindly advise if you represent Ms. Franklin.

Tamburri continued to testify:

> And I believe I wrote to her and corresponded with her. I was upset by that. I did not reply until June 3. I was in a trial at the time; I was just backlogged with many things. But I wrote back in response to this that it was a misrepresentation of what had transpired. I tried to fax her a letter; the fax would not go through. I received a fax from her the same day back to me saying that my fax did not go through. So what I did, I told my secretary to mail it and you better send a copy by certified mail which I did do, and it was returned unclaimed. There were three notices that were returned.
> [T64-65][1]

Count Four

Count four of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(a) (failure to communicate).

Respondent was to file a suit against the Market Transition Facility on behalf of grievant, following the previously mentioned auto accident of December 6, 1990. Grievant could not recall at the DEC hearing if this case was to be handled on a contingent fee basis or otherwise. Respondent did file a suit on behalf of grievant, which was dismissed on December 10, 1993 for lack of prosecution. According to grievant, she had no idea what happened in the case because respondent

[1]T refers to the transcript of the DEC hearing that took place on July 13, 1995.

did not communicate with her about the case. As a result, grievant's medical bills went unpaid, some providers instituted suit and, in some cases, judgments were entered against grievant. Finally, Rinsky was brought in to handle the matter on behalf of grievant.

Rinsky testified that he was unable to obtain the file from respondent, despite his best efforts.

Counts Five and Six

Counts five and six of the complaint alleged violations of RPC 1.1(b) (pattern of neglect) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities), based on the facts recited in the previous counts of the complaint.

THE PLATTMAN MATTER - District Docket No. VB-93-27E

The complaint charged respondent with violations of RPC 1.1 (b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 8.1(b) (failure to cooperate with the disciplinary authorities); RPC 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

On November 19, 1989, Doris Flowers sustained injuries when she fell in a Pathmark supermarket. Flowers retained respondent in a subsequent action against the supermarket and others. She was treated by Andrew B. Weiss, M.D. During the course of the treatment, two individuals in Dr. Weiss' office, Madge Weiss (his wife) and Doreen Plattman, acted as office managers for Dr. Weiss. In that capacity they each had dealings with respondent.

On January 20, 1993, Plattman ("grievant") filed a grievance on behalf of Dr. Weiss' office.

Grievant, who did not testify at the DEC hearing, stated in the grievance that the doctor's office required a Letter of Protection ("LOP") from respondent to guarantee payment for Flowers' treatment, which ended on November 30, 1990. The grievance went on to state that the office experienced great difficulty in obtaining the LOP from respondent.

In her answer to the ethics complaint, respondent attached a letter dated October 4, 1990 that was, in fact, an LOP. There is no indication in the record that the letter was not sent.

The grievance also stated that office efforts to obtain information on the Flowers matter went unheeded by respondent from late 1990 until sometime in 1992. Two letters addressed to respondent from the doctor's office, dated May 8, 1992 and August 19, 1992 respectively, evidenced requests for information on the Flowers matter. Grievant contended that respondent failed to communicate the status of the matter to the office on a timely basis.

To refute the allegations, respondent appended to her answer two letters that served as status updates to the office. The first is dated June 18, 1991 and the second October 21, 1992.

On December 30, 1992, the doctor's office sent a certified letter to respondent in an effort to obtain an update to respondent's October 21, 1992 letter, in which respondent had indicated that the physicians treating Flowers would be notified upon a final determination of the case. Not hearing from respondent, on January 12, 1993 Mrs. Weiss called and spoke to respondent regarding a status update. Mrs. Weiss testified that respondent called Dr. Weiss a "money-grubbing" doctor during that conversation. Mrs. Weiss further stated that she sent the matter to a collection agent shortly after that conversation, which action prompted a call from Flowers. Flowers was apparently surprised that Dr. Weiss had not been paid, as her matter had been settled one year before (no supporting dates were

provided in the testimony). According to Mrs. Weiss, respondent paid Dr. Weiss' office shortly thereafter.

* * *

The DEC made numerous findings with regard to each matter, in many instances not citing the basis supporting such findings. In the Branch matter, the DEC found:

> Respondent's failure and neglect to handle the matter entrusted to her constituted gross negligence in violation of RPC 1.1 (a).
> Respondent's failure to act with due diligence constituted a violation of RPC 1.3.
> Respondent's failure to communicate with her client constituted a violation RPC of 1.4.
> Respondent's acceptance of the fee of $4,000 without providing reasonable representation is a violation of RPC 1.5.
> Respondent was sent a letter of inquiry regarding the investigation of the grievant dated March 9, 1994.
> Respondent has not affirmatively responded to such letter of inquiry in violation of RPC 8.1.
> Respondent has exhibited a pattern of gross negligence or neglect in the handling of legal matters generally, as exhibited by the filing of five grievances by separate grievants in 1992, 1993, and 1994, all involving her failure to communicate and/or the failure to represent the grievant after being retained, in violation of RPC 1.1(b).

In Franklin, the DEC found numerous violations. With regard to Count one, the DEC found the following:

> Respondent's failure and neglect to handle the matter entrusted to her constituted gross negligence in violation of RPC 1.1(a); respondent's failure to act with due diligence constituted a violation of RPC 1.3; respondent's failure to communicate with her client constituted a violation of RPC 1.4; respondent's acceptance of

a fee of $7,500 without providing reasonable representation is a violation of RPC 1.5.

With regard to Count two, the DEC found violations of RPC 1.1(a); RPC 1.2; RPC 1.3; RPC 1.4; RPC 8.4(c) and RPC 8.4(d); in count three, the DEC found violations of RPC 1.1(a); RPC 1.2; RPC 1.3 and RPC 1.4; in Count four the DEC found violations of RPC 1.1(a); RPC 1.3 and RPC 1.4(a). The DEC there found additional violations of RPC 1.1(a); RPC 1.2 and RPC 1.4 for respondent's failure to forward the file to the new attorney.

The panel report is devoid of any findings in the Plattman matter. In fact, the report does not state what, if any, violations were found.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's findings of unethical conduct are supported by clear and convincing evidence. The Board could not concur, however, with each of the DEC findings, as many were inapplicable or inappropriate. The record does support certain violations, however.

In Branch, respondent did not testify, present evidence or file an answer to the complaint. Grievant retained respondent in January 1992 to represent her son in a criminal matter. He was incarcerated at the time. The case had been assigned to a pool attorney from the public defender's office. Upon retention, respondent received $4,000 of a $10,000 fee for the representation.

It became clear to grievant in 1993 that respondent was doing nothing in her son's behalf. Indeed, respondent's inaction here was a violation of RPC 1.3 (lack of diligence). There is no

evidence that respondent wrote a single letter, filed a substitution of attorney, or did anything to protect her client or earn her fee. In fact, this same misconduct also violated RPC 1.1(a).

It is clear from grievant's testimony that respondent ignored grievant's requests to obtain information about her son's case, as evidenced by her failure to return phone calls, failure to accept "faxes", and failure to acknowledge grievant's efforts in any manner. In this regard, respondent's conduct violated RPC 1.4(a) (failure to communicate).

Grievant attempted to recover her $4,000 retainer when she learned that respondent did no apparent work on the file. The complaint mistakenly alleged a violation of RPC 1.5(a) for that misconduct, which deals with fee overreaching. Such is not the case here. Respondent accepted a fee without providing reasonable representation. More properly, respondent's conduct falls within the purview of ACPE Opinion No. 644, 126 N.J.L.J. 966 (October 11, 1990) and RPC 1.16(d) (surrender of client property upon termination of representation). That opinion holds that, while there is no per se prohibition against non-refundable retainers, such an arrangement must be fair and reasonable under the circumstances of the particular representation. There is no evidence in the record that respondent's was a non-refundable retainer. Even if it were, however, it was unreasonable for respondent to keep the retainer in the criminal case, when she performed little or no work on the matter. Thus, respondent violated ACPE Opinion No. 644 and RPC 1.16(d), which require the refunding of any advance payment that has not been earned. The Board determined that the entire retainer was unearned.

As to the criminal aspects of Count one in the Franklin matters, respondent did not file an answer to the ethics complaint and did not testify at the hearing. The testimony of grievant was found to be credible, and clear and convincing evidence was presented to support certain violations.

Specifically, respondent filed no papers in the criminal matter, which contained serious charges and for which respondent was paid $7,500. There is no question that respondent's conduct constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Respondent also displayed an utter lack of communication with her client, in violation of RPC 1.4(a). As in the Branch matter, above, the Board found that respondent's $7,500 fee was unearned. As such, respondent violated RPC 1.16(d) and ACPE Opinion 644 by failing to return the fee to grievant upon termination of the representation.

Also disturbing was respondent's complete rejection of Tamburri's attempts to obtain the file upon termination of her representation. If respondent's neglect did not harm grievant sufficiently, her stonewalling deprived grievant of precious time, where little remained.

With regard to Count two in Franklin, grievant testified that she could not obtain information from respondent about the status of her auto accident case almost from the outset of the representation. While respondent did file suit on behalf of grievant in December 1992, she never caused a summons to be issued and did not otherwise prosecute the case. Respondent violated RPC 1.1(a), by grossly neglecting the case, and also failed to diligently prosecute the matter, in contravention of RPC 1.3. In like manner, respondent failed to communicate with grievant from the time she originally obtained the file through the point when Rinsky filed his motion to compel the turnover of the file. Her misconduct in this regard violated RPC 1.4(a).

In addition, respondent violated RPC 1.16(d) and ACPE Opinion No. 554, 115 N.J.L.J. 565 (May 16, 1985) for her failure to turn over the file to Rinsky after termination of the representation, forcing him to file a motion to compel its return.

Count two contained an allegation that respondent violated RPC 8.4(c) and RPC 8.4(d) by making false statements in her Certification in Opposition to Motion to Compel Turnover. Specifically, the alleged falsehood was that she had not received the grievance. The Board could not concur with the DEC's findings, as the evidence does not show that respondent was served with the grievance in this matter. Accordingly, the Board dismissed the charges of violations of RPC 8.4(c) and RPC 8.4(d).

With regard to Count three, respondent was retained to file a civil suit against the security guard and others. The matter was dismissed for lack of prosecution. Respondent's total lack of diligence in prosecuting the civil suit constituted a violation of RPC 1.3; her gross neglect amounted to a violation of RPC 1.1(a); her complete failure to communicate with grievant violated RPC 1.4(a); and her failure to turn the file over to Tamburri upon termination violated RPC 1.16(d) and ACPE Opinion No. 554.

Count four is part and parcel to the auto accident in Count two above. The Board determined to merge the two counts, as they essentially refer to the same misconduct.

Count five alleged a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities) for respondent's failure to reply to the DEC's inquiry of July 30, 1993. While respondent did not answer the complaint, she did appear (albeit briefly) at the DEC hearing. Respondent also appeared at the Board hearing in this matter on November 20, 1996, December 18 1996 and January 23, 1997. Consistent with previous cases where attorneys ultimately cooperated with the disciplinary authorities, the Board dismissed this charge.

The final count of the complaint, Count six, charged respondent with a violation of RPC 1.1(b) (pattern of neglect).

It is undeniable that respondent grossly neglected the criminal matter and that the civil suit stemming from it was dismissed for lack of prosecution. Also, respondent grossly neglected the auto accident suit and the subsequent suit against the Market Transition Facility, allowing medical providers to obtain judgments against grievant. Respondent grossly neglected the Branch matter as well. Accordingly, respondent's actions, when combined, constituted a pattern of neglect, in violation of RPC 1.1(b).

With respect to respondent's handling of the Plattman matter, grievant failed to disclose two of respondent's update letters sent to the doctor's office on June 18, 1991 and October 21, 1992. These two letters detrimentally affected the credibility of Plattman's grievance and Mrs. Weiss' knowledge of the office operations. Instead of being left in the dark for a period of almost two years, from November 1990 to October 1992, as grievant alleged, the doctor's office was updated approximately every six months during that time. While this might not be as often as the office wished to be updated, it did not rise to the level of a violation of RPC 1.4(a).

With respect to the LOP, it is clear, contrary to grievant's contention, that there was such a letter in the doctor's office file as early as October 1990. This was during the time that Flowers was still under active treatment by Dr. Weiss. Perhaps the letter went unrecognized because the language protecting Dr. Weiss' fees was in the final paragraph of the letter. Nonetheless, the protection sought is evident from a simple reading of the letter. There is no evidence that the office did not receive this letter. Consequently, the Board dismissed the charges relating to respondent's failure to provide the LOP.

Finally, there is no question that Dr. Weiss deserved to be paid promptly upon the settlement of the Flowers matter. However, the only evidence (albeit unchallenged by respondent in her answer) is the testimony of Mrs. Weiss. That testimony was as follows:

> I did turn this over to our collection agency and then about three or four weeks later received a phone call from Mrs. Flowers, 'I'm so sorry. I thought that everyone was paid. My case was settled a year ago and the attorney received payment and I am finding out now that no one has been paid'. And so then within a short period of time after that checks arrived in the mail from Dorell King paying the bills .
>
> [T10]

Respondent's conduct in delaying the payment of doctor's bill violated RPC 1.3 (lack of diligence).

In summary, in Branch, respondent's transgressions included gross neglect, lack of diligence, failure to communicate, and refusal to return the retainer to the client. In Franklin, respondent's infractions included gross neglect, lack of diligence and failure to communicate in three matters, failure to return the retainer in one matter, and failure to turn over the file in two matters. In the Plattman matter, respondent showed a lack of diligence by not paying the doctor for a period of one year after settlement of the case.

A review of recent cases shows that the Court has imposed discipline ranging from a reprimand to a term of suspension where the ethics violations have been a combination of gross neglect, pattern of neglect, failure to communicate and misrepresentation. In some cases, two or three of these violations are present, either alone or coupled with a different violation, such as failure to cooperate with the DEC or failure to keep proper trust account records. See, e.g., In re Gordon, 139 N.J. 606 (1995) (reprimand imposed for attorney's lack of diligence and failure to communicate

in two matters, gross neglect and failure to return a file in one of the two matters. The attorney had a prior public reprimand). In re Carmichael, 139 N.J. 390 (1995) (reprimand imposed for attorney's lack of diligence and failure to communicate in two matters. The attorney had a prior public reprimand). In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed for attorney's failure to communicate in three matters, lack of diligence in two of the three matters and gross neglect in two of the three matters).

After a consideration of the relevant circumstances, which included respondent's unblemished professional career of seventeen years, a five-member majority of the Board determined to impose a reprimand, with the further requirement of a one-year proctorship and the immediate return of the entire retainers/fees paid in Branch and Franklin to the grievant in each matter. Four members would have imposed a three-month suspension, in addition to the other requirements above.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 4/8/97

LEE M. HYMERLING
Chair
Disciplinary Review Board