SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-276

IN THE MATTER OF

WILLIAM F. ARANGUREN

AN ATTORNEY AT LAW

Decision

Argued: December 16, 1999

Decided: May 10, 2000

Kathleen Walrod appeared on behalf of the District VI Ethics Committee.

Robert Fuchs appeared on behalf of respondent, who also was present.

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

This matter was before us based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1991 and maintains law offices in Jersey City, Hudson County.

The formal ethics complaint alleged violations of numerous Rules of Professional Conduct in respondent's representation of three clients in five personal injury actions.

In or about March 13, 1986, Marie McHale, the grievant, retained respondent to represent her in connection with a can of juice toppled from a supermarket shelf, striking her on the wrist. The uncontroverted facts relevant to this disciplinary matter are as follows:

On January 26, 1987, respondent filed a complaint in the Hudson County Superior Court against the Supermarket Generals Corporation ("SGC"). The summons and complaint were served upon SGC, who filed an answer on May 4, 1987. Thereafter, SGC filed a motion to dismiss the complaint for plaintiff's failure to provide answers to interrogatories. On March 21, 1988, the trial judge entered an order dismissing the complaint.

In August 1990, SGC filed a motion asking the court that the dismissal be made with prejudice. That motion was denied without prejudice on September 14, 1990. Nearly two years later, on July 27, 1992, respondent wrote to the court requesting that the case be scheduled for trial as soon as possible. By letter dated August 7, 1992, the trial judge advised respondent that the complaint had been dismissed and could not be reinstated without a formal motion. Respondent took no action to restore the complaint.

Sometime in August 1992, SGC brought another motion for the dismissal to be made with prejudice. Respondent filed opposition papers in behalf of McHale. However, SGC's motion was granted. On December 18, 1992, the court entered an orders dismissing the complaint with prejudice. There is no evidence that respondent was aware of this motion prior to his September or October 1992 filing in McHale's behalf.

On May 12, 1993, respondent sent copies of a notice of appeal and case information statement to SGC's counsel and to McHale. Respondent never filed the notice of appeal. On October 13, 1993, SGC's counsel notified respondent that, according to his own investigation, the appeal had never been docketed with the Appellate Division.

In February 1995, McHale received a letter from her treating physician, indicating that, according to respondent, he was no longer McHale's attorney. On February 25, 1995, McHale filed the within ethics grievance.

McHale testified that she was unaware of any problems with her case throughout the representation and that there was little activity in the matter from its inception until about August 1990. According to McHale, from then until approximately July 1992, she or her husband called respondent every other week for information about the case. Respondent never returned those calls. McHale further testified that, on or about August 1992, she received a letter from the trial judge stating that the complaint had been dismissed with prejudice on August 17, 1990. McHale testified that she immediately contacted respondent to question him about the dismissal, but that he never returned her calls. On August 7, 1992, McHale wrote to respondent requesting information about the dismissal. McHale stated that respondent never replied to her letter. McHale testified that, from August 1992 until early 1995, she heard nothing from respondent.

McHale denied that she ever terminated respondent's representation, adding that she had been informed by her physician that respondent was no longer representing her.

For his part, respondent testified that the matter had proceeded apace until approximately March 1988, when the trial judge dismissed the complaint for failure to answer interrogatories. Respondent claimed that he had not filed an opposition to the motion because he had not been served with it. Respondent claimed, however, that he had provided the answers to SGC's interrogatories, albeit ten days after the order was entered. The answers were signed and dated by McHale on October 7, 1987. Exhibit R-1. Respondent had no explanation for the five-month delay in sending the answers to his adversary.

It appears that respondent performed no work on the case from March 1988 until August 1990, when he filed a certification in opposition to SGC's first motion to dismiss the complaint with prejudice.

According to respondent, he thereafter (September 1990), filed a motion to reinstate the complaint. Respondent admitted, however, that the motion was deficient, having been filed without a notice of motion . That motion was denied on September 14, 1990.

Respondent, testified that, from December 1990 until late October 1992, when he filed his opposition to SGC's August motion for dismissal with prejudice, he heard nothing from his adversary or the trial court regarding his 1990 motion to reinstate the complaint. Respondent never contacted the court to ascertain the status of his motion. With regard to the dismissal, respondent stated that he received the judge's August letter. However, respondent claimed that he was unaware of SGC's motion until much later.

With respect to the May 1993 notice of appeal, respondent testified that he prepared and signed a cover letter to the clerk of the Appellate Division with a certification, notice of appeal and case information statement. However, respondent could not explain why those documents had never been filed with the Appellate Division. Respondent admitted that he took no further action in the case after the preparation of those documents.

Finally, respondent had no documentation to or from McHale to substantiate a termination of the representation, as suggested in the physician's letter. Likewise, respondent had no recollection of ever advising the physician that he no longer represented McHale.

The Claproth Matters - District Docket No. VI-95-20E

A. The Claproth/Foodtown Matter

The complaint alleged violations of RPC 1.1(a)(gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), 3.4(d) (failure to comply with discovery requests), RPC 1.4 (failure to communicate), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 3.3 (making false statements of material fact), RPC 4.1 (truthfulness in statements to others), RPC 1.16(d) (failure to release file upon termination of representation), RPC 1.5 (failure to utilize retainer agreement) and RPC 8.1(b) (failure to cooperate with the ethics authorities). Prior to the hearing below, the DEC dismissed the alleged violations of RPC 1.5 and RPC 1.16(d).

In or about March 1987, respondent's godmother/cousin, Barbara Anne Claproth, the grievant, retained respondent to represent her in a personal injury action against Food Circus Super Markets, Inc., t/a Foodtown ("Foodtown"), for injuries sustained when a can of dog food fell from a shelf and struck her in the face.

Between March and December 1987, Foodtown's insurance carrier, Twinco Services, sent respondent five letters requesting information about Claproth and her injuries. Respondent did not answer any of those letters.

On October 7, 1988, respondent filed a complaint in the Middlesex County Superior Court against Foodtown. After the summons and complaint were served, on January 11, 1989 Foodtown's attorney sent respondent a copy of its answer together with interrogatories to be answered by Claproth.

On March 28, 1989, Claproth provided respondent with handwritten, signed answers to the interrogatories. When respondent did not send Claproth's answers to opposing counsel, on September 28, 1989 Foodtown brought a motion to dismiss the complaint for failure to answer interrogatories. The motion was granted on October 27, 1989.

Thereafter, in August 1990, respondent brought a motion to vacate the order of dismissal dated October 1989, alleging that he had not received the order until nine months later, July 9, 1990. However, some seven months earlier, on November 30, 1989, respondent had sent Claproth the following letter:

> Enclosed herewith find one (1) copy of the Order signed by the Honorable Herman L. Breitkopf, Assignment Judge, Superior Court of New Jersey,

her case was in jeopardy, testifying that respondent continually reassured her that he would take care of her case.

Claproth testified that, in 1993, she contacted the court directly to ascertain the status of her matter; it was only then that she learned, for the first time, that her case had been dismissed. Shortly thereafter, Claproth retained new counsel.

Lastly, Claproth testified that, despite repeated requests, her new attorney could not secure her file from respondent. That attorney was forced to obtain a court order for respondent's release of the file.

Respondent admitted that he did not reply to the insurance carrier's numerous requests for information about the case. Respondent could not explain why Claproth's completed interrogatories, dated March 28, 1989, were not forwarded to his adversary. As to the misrepresentation in his motion that he had not received the October 1989 order of dismissal until July 1990, respondent claimed that his certification must have been inaccurate.

Likewise, respondent contended that his letter to Claproth, in which he failed to disclose the reason for the dismissal, was incorrect.

With regard to the alleged violation of RPC 1.4, respondent presented no evidence of any communication with Claproth after the November 30, 1990 letter.

Finally, with regard to the alleged failure to turn over Claproth's file to her new attorney, respondent admitted his awareness at the time that he could have satisfied RPC

1.16(d) by giving Claproth a copy of her file. He did not do so. Instead, respondent kept the original file to "protect " himself in the event of a malpractice suit.

B. The Claproth/Vornado Inc., Matter

The complaint did not distinguish between the alleged violations in this matter and in the prior Foodtown matter, as they were contained in the same count.

In or about July 1988, Claproth retained respondent to represent her for injuries sustained in a slip-and fall accident in a parking lot. From August 31, 1988 to September 10, 1990, respondent received six letters from the insurance carrier, American International Adjustment Company ("American"), seeking information about Claproth's claim. Respondent never replied to any of those letters. However, respondent filed a complaint on July 20, 1990, which was dismissed on October 15, 1991 for failure to answer interrogatories.

For her part, Claproth recalled that she had given respondent her written answers to interrogatories in January 1991, some ten months before the defendant's motion to dismiss the case. She recalled being asked to complete the same answers sometime later and, in particular, recalled respondent's law clerk at the time being puzzled as to why she was required to answer the same interrogatories again years later. Finally, Claproth testified that, as in the Foodtown matter, respondent was unresponsive to her requests for information

about her case. In 1993, she contacted the court and was told, for the first time, that her case had been dismissed.

Claproth retained her new attorney in the Foodtown case to take over the representation in the Vornado matter. As in Foodtown, her new attorney was forced to obtain a court order before respondent relinquished the file.

For his part, respondent admitted that the Vornado complaint had been dismissed for failure to answer interrogatories. However, respondent claimed that he had warned Claproth, as early as January 15, 1991, that the complaint would likely be dismissed if she did not submit her answers to interrogatories immediately. Respondent did not recall if he ever received completed answers, as Claproth had claimed.

In his answer to the formal ethics complaint, respondent recounted the following events that followed the order of dismissal:

> On October 25, 1991, a settlement conference was scheduled at which time an offer of settlement was made in the amount of $16,500 which amount was rejected by Ms. Klaproth [sic]. On November 8, 1991, [the judge's] October 15 Order Dismissing the Complaint was received by the respondent and forwarded the following day to the Klaproths and advising them that they had failed to answer interrogatories previously served upon them. Despite the foregoing, an arbitration hearing was scheduled for December 23, 1991, depositions on January 31, 1992 and the defendant's attorney agreement to execute a Consent Order sent to him on July 9, 1992, which he confirmed by letter dated August 27, 1992, when Ms. Klaproth answered interrogatories, which she did and which respondent forwarded to defense counsel on September 1, 1992. Subsequently after which respondent's [sic] services were terminated.

Respondent could not explain why, after receiving the court's October 15, 1991 order of dismissal, he continued to take action as though the case was still pending. Respondent admitted that he never filed a motion to have the complaint restored.

Finally, respondent presented no evidence of any correspondence from him to Claproth after January 15, 1991 and could not document any communication with her after that date.

The Catanio Matters - District Docket No. VI-95-21E

A. The Catanio/Gottesman Matter

The complaint alleged violations of RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 3.4(d) (failure to comply with discovery requests), RPC 1.4(a) (failure to communicate with client), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 1.16(d) (failure to release file upon termination of representation). Before the hearing the DEC dismissed the alleged violations of RPC 3.4(d) and RPC 8.1(b).

On or about September 1, 1987, Frank A. Catanio, the grievant, retained respondent to represent him for injuries sustained in a May 6, 1987 automobile accident. Respondent filed a complaint on May 3, 1989 in Hudson County Superior Court, titled Frank Catanio v. Harold Gottesman and Ellen Gottesman. The summons and complaint were served on July 28, 1989.

On December 29, 1989, the court sent respondent a notice to file a written objection as to why the action should not be dismissed for lack of prosecution, pursuant to R. 1:13-7. When respondent did not file an objection, the complaint was dismissed on January 17, 1900. Four weeks later, on May 16, 1990, a different judge — presumably unaware that the complaint had been dismissed — entered a consent order allowing the defendants (the Gottesmans) additional time to file an answer. Respondent, who signed the consent order, did not tell the court or his adversary that the complaint had been dismissed. It is not known if, at that time, respondent was unaware of the dismissal. Shortly thereafter respondent's adversary found out that the complaint had been dismissed. Indeed, on August 27, 1990, the adversary sent respondent the following letter:

> Pursuant to my secretary's conversation with your office, we have been advised that the above referenced matter [was dismissed] on February 2, 1990 by an Order signed by Judge Gallipoli. Kindly restore the same so we might file our Answer. Thank you.
>
> [Exhibit FC-15]

Respondent never filed a motion to reinstate complaint. The DEC did not ask him why not.

Catanio testified that he was never aware of any problems with the case. Indeed, Catanio recalled several sets of interrogatories that, he claimed, he answered promptly and returned to respondent. Catanio remembered an April 5, 1990 telephone conversation with respondent, in which they discussed several issues, including respondent's need for medical documentation from Catanio. Catanio testified that respondent never told him at the time

that his case had been dismissed months earlier. In fact, Catanio believed that the case was ongoing at that time. Moreover, Catanio could not recall ever seeing respondent's September 2, 1990 letter requesting answers to interrogatories in order to reinstate the complaint. Finally, Catanio was certain that he never received respondent's November 30, 1990 letter terminating the representation. Catanio was equally certain that he had not terminated the representation himself.

Respondent admitted that he did not enter a default judgment against the defendants or take any action to prevent the dismissal of the complaint. Respondent testified that he could not recall if he had filed an objection to the court's notice of dismissal.

With regard to the allegation that respondent failed to communicate with Catanio, respondent could not remember sending Catanio correspondence or pleadings to keep him abreast of the status of the case. Likewise, respondent presented no evidence of any communications with Catanio, other than the several letters previously described.

B. The Catanio/Zhune Matter

The complaint alleged identical violations as in the Gottesman matter, with the addition of RPC 1.5(b) (failure to utilize retainer agreement). That charge was dismissed prior to the hearing, as were the charges of violations of RPC 3.4(d) and RPC 8.1(b).

On or about July 9, 1991, respondent filed a complaint for injuries sustained by Catanio in a July 9, 1989 automobile accident. Also on July 9, 1991, Catanio gave

respondent a $300 check with the words "for filing fees" written in the memo section. Thereafter, on June 25, 1992, the complaint was dismissed for lack of prosecution.

Catanio testified that respondent was representing him in both the Gottesman matter and the Zhune matter, when he issued the check for filing fees. Although Catanio could not specifically recall if the check was for the Zhune filing fee, he was adamant that he would not have retained respondent to represent him in Zhune if, as respondent alleged, respondent was no longer representing him in the Gottesman matter.

Catanio further testified that, on numerous occasions, he attempted to obtain information about the status of this case, without success. He stated that, hearing nothing from respondent, in or about 1992, he retained a new attorney to replace respondent in both matters.

Lastly, Catanio testified that, as of April 1995, when he filed his grievance, respondent had not released the files in either matter to his new attorney, despite numerous requests for the file. Indeed, according to Catanio, his new attorney had made arrangements to have the Gottesman and Zhune files copied at Catanio's expense, but respondent failed to make the files available for copying on those prearranged dates.

For his part, respondent relied upon his November 30, 1990 letter to Catanio in the Gottesman matter for the proposition that, after that date, he did not represent Catanio in any matters. Respondent further contended that he filed the complaint in Zhune as an accommodation to Catanio, who was going to proceed pro se. When asked to explain why

Catanio had given him a $300 check for "filing fees" on the same day that respondent had filed the Zhune complaint, respondent suggested that the check may have been for fees in Gottesman.

With regard to the allegation that he failed to cooperate with the DEC, respondent stated that a January 1996 office flood partially destroyed some of his files. Other files, according to respondent, were mixed together by the landlord's workman, hired to clean the building. As a result, respondent claimed, he was unable to give the DEC numerous documents regarding these matters.

In mitigation of his conduct, respondent contended that, when these client matters were pending, he was saddled by marital difficulties and by his father's illness. Respondent also produced evidence of his pro bono work for several institutions over the years, including Hudson County Legal Services and New Jersey Battered Women's Services.

* * *

In McHale, the DEC found violations of RPC 1.3, RPC 1.4, RPC 3.2, RPC 3.4(d), RPC 8.4(c) and RPC 8.1(b). The DEC dismissed the alleged violations of RPC 1.5 and RPC 1.16(d), as respondent had complied with both of those rules by the time of the hearing.

With respect to both of the Claproth matters, the DEC found violations of RPC 1.3, RPC 3.2, RPC 3.4(d), RPC 1.4, RPC 8.4(c), RPC 3.3, RPC 4.1 and RPC 8.1(b). The DEC dismissed the alleged violations of RPC 1.5 and RPC 1.16(d).

In the two Catanio matters, the DEC found violations of RPC 1.3, RPC 3.2, RPC 1.4, RPC 8.4(c) and RPC 1.16(d). The DEC dismissed the allegations of violations of RPC 1.5, RPC 3.4(d) and RPC 8.1(b).

Finally, the DEC found violations of RPC 1.1(a) and (b) in all five of the matters.

In recommending a one-year suspension, the DEC stated the following in its hearing panel report:

> This recommendation is based upon all of the above findings as well as the fact that respondent was admonished in 1987 for violations of RPC 1.3, 1.4 and RPC 1.15(b) in connection with his handling of two separate personal injury matters. It is also based upon the Panel's findings that respondent's testimony throughout these proceedings was incredible. Respondent failed to exhibit the ability to answer a direct question and on various occasions was clearly lying in his testimony. Respondent consistently displayed contempt for the entire process and blamed all of the error in the handling of these matters on anyone but himself.

* * *

Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Although the evidence of misconduct in these matters was overwhelming, respondent displayed no regret. Even when confronted with compelling evidence of misconduct, respondent attempted to defend his actions (or inactions), showing no recognition of wrongdoing. Moreover, through hundreds of pages of testimony, respondent consistently refused to answer questions as posed to him, choosing instead to be vague or completely unresponsive.

In McHale, respondent filed the complaint in January 1987. SGC filed its answer in May 1987. McHale's answers to SGC's interrogatories, dated October 7, 1987, were not sent to SGC until March 1988, after the case was dismissed for failure to answer interrogatories. Although respondent could have filed a motion to reinstate the complaint, nearly two years passed with no action on his part. In 1990, SGC moved to dismiss the complaint with prejudice for respondent's failure to prosecute the action. That motion was denied. Yet, respondent took no further action until 1992. Respondent wrote to the court to request a trial date. On August 7, 1992, the trial court advised respondent that the case had been dismissed (without prejudice) and could not be reinstated without the filing of a formal motion. Yet, in his DEC testimony, respondent contended that he was unaware of the outcome of his 1990 restoration motion until October 1992. Surely, the judge's August 1992 letter to respondent cleared up that issue. Again, respondent took no action, allowing the complaint to be dismissed with prejudice in December 1992. Incredibly, respondent

waited another six months before preparing a notice of appeal for filing in the Appellate Division. It does not appear that respondent ever filed the appeal.

Throughout the time period from 1987 to 1993, respondent's mishandling of the case was without excuse. Respondent presented no evidence to refute the allegations of violations of RPC 1.1(a) and RPC 1.3. In not taking appropriate action to further McHale's case, respondent exhibited both gross neglect and lack of diligence. In addition, his failure to expedite the litigation against SGC violated RPC 3.2. We find, however, that the alleged violation of RPC 3.4 (failure to comply with discovery requests) was duplicative and subsumed in the above findings.

With regard to the allegation that respondent failed to communicate with McHale, he violated both subsections (a) and (b) of RPC 1.4. First, the record is barren of evidence that respondent kept his client informed about the two dismissals. Moreover, McHale testified that she had no idea of problems in the case until 1992, when the court sent her a letter about the dismissal. Also, respondent did not advise McHale of critical events in the case that would have enabled her to evaluate respondent's performance and his overall representation.

With regard to the alleged violation of RPC 8.4(c), the DEC believed that respondent never intended to file the notice of appeal and had prepared it only to give McHale the illusion that he was attempting to reinstate the complaint. The record suggests that this could been the case. However, in the face of respondent's denial that he had intended to deceive McHale in this regard, more compelling evidence is necessary to find that

respondent intended to deceive McHale. For that reason, we dismissed that charge. Unquestionably, however, respondent violated RPC 8.4(c) by failing to disclose to McHale that the complaint had been dismissed twice, first without prejudice and then with prejudice.

With regard to the alleged violation of RPC 8.1(b), at the hearing below respondent produced documents that had been requested on numerous occasions by the DEC. Indeed, one document, McHale's signed and dated answers to interrogatories was not produced until after she had completed her testimony. There was no excuse not to supply that document in time to allow McHale to be questioned about it. We find respondent's misconduct in this context alone violated RPC 8.1(b). We also find that the DEC properly dismissed the remaining charges of violations of RPC 1.5(d) and RPC 1.16(d).

In Claproth/Foodtown, respondent received five letters from the defendant's insurance carrier regarding medical information and replied to none of them. Claproth testified that she had given respondent the medical information necessary to reply to those letters sometime earlier and that she was unaware that respondent had not forwarded that information to the insurance carrier. As early as January 1989 respondent was in possession of defendant's interrogatories. Claproth gave respondent answers to them on March 28, 1989. Inexplicably, respondent did not forward the answers to counsel for Foodtown, causing the complaint to be dismissed on October 27, 1989. Almost one year later, respondent filed a motion to vacate the dismissal. Respondent's motion was denied due to procedural deficiencies. Nothing happened for two additional years, at which point

respondent again attempted to reinstate the complaint by filing another motion, which was also procedurally deficient. That motion was apparently denied, as was his November 1992 motion for reconsideration.

It is clear from all of the above facts that respondent grossly neglected the case for years at a time and that, when he did take action, he was unable, through ineptitude, to restore the complaint. We find respondent's misconduct in this regard to be in violation of RPC 1.1(a), RPC 1.3 and RPC 3.2. Again, the alleged violation of RPC 3.4(d) is so similar in nature to these violations that it should be subsumed in the above findings.

With regard to the charge that respondent violated RPC 1.4, there is no evidence that respondent kept Claproth adequately informed about the status of the case. Indeed, Claproth ascertained the true status of the case on her own in 1993, some four years after the dismissal of the complaint and despite frequent queries to respondent. Clearly, thus, respondent violated RPC 1.4(a). In fact, respondent also violated RPC 1.4(b) by not advising Claproth of critical aspects of the case, that might have enabled her to make informed decisions about the representation without resorting to self-help.

With regard to the charge that respondent violated RPC 8.4(c), we find that, by his numerous assurances to Claproth that her case was not in jeopardy, respondent misrepresented by silence the status of the case. In fact, it had been dismissed due to respondent's failure to prosecute the case. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347(1984).

Furthermore, respondent's certification to the court, in which he denied receipt of the October 1989 order of dismissal until July 1990, was also a misrepresentation. In fact, respondent had sent that order to Claproth months earlier, as shown by his own letter to her. Here, too, respondent violated RPC 8.4(c). We conclude, however, that the similar charges of violations of RPC 3.3 and RPC 4.1 should be subsumed in the finding of a violation of RPC 8.4(c).

In Claproth/Vornado, respondent also displayed gross neglect. He failed to reply to six letters from Vornado's insurance carrier, asking for Claproth's medical information. Although respondent filed a complaint, it was dismissed for failure to answer interrogatories, which Claproth had provided to respondent some ten months earlier. Thereafter, respondent admittedly took no further action to restore the complaint. Respondent's misconduct was in clear violation of RPC 1.1(a), RPC 1.3 and RPC 3.2.

Here, too, respondent failed to keep Claproth advised of important aspects of the Vornado case, in violation of RPC 1.4(a). Respondent presented no evidence of communication with Claproth in this regard. As previously noted, Claproth first learned of the dismissal of her case in 1993 by contacting the court directly.

With respect to the alleged violation of RPC 1.16(d), respondent admitted that he did not release the file to new counsel. He claimed that he wanted to have possession of the original documents in case he had to defend himself against a malpractice suit. That excuse rings hollow, however, because respondent also knew that he could have given a copy of the

file to the new attorney or, in the alternative, kept a copy for himself. Respondent cannot claim that he was ignorant of the options available to him in this regard. Due to respondent's misconduct, in violation of RPC 1.16(d), Claproth's new counsel was forced to obtain a court order for the release of the file.

Finally, the DEC found a violation of RPC 8.1(b) on the basis that respondent failed to turn over a complete file to the DEC in this matter. The DEC did not believe respondent's unsubstantiated story about a 1996 office flood that allegedly destroyed some of his original files. Although respondent's story was unsubstantiated and some of his testimony seemed questionable, there is no clear and convincing evidence that he was lying about it. Accordingly, we dismissed that charge.

In both Catanio/Gottesman and Catanio/Zhune, respondent's complaints were dismissed for his failure to prosecute the matters. In Gottesman, respondent ignored both the court notices to file objections to the imminent dismissal and his adversary's invitation to restore the case after its dismissal. In Zhune, respondent filed a complaint and took no further action in Catanio's behalf. Respondent claimed that, by that time, Catanio had terminated the representation and that he, respondent, only filed the complaint as an "accommodation" to Catanio. We find respondent's contention disingenuous. Clearly, respondent knew that he was the attorney of record at all times after the filing of the complaint. Moreover, there is no evidence that respondent was ever relieved as counsel in either of Catanio's matters, beyond respondent's questionable November 2, 1990 letter to

Catanio purporting to terminate the representation. Catanio, too denied ever receiving that correspondence and denied terminating the representation himself. Indeed, Catanio testified that he never would have retained respondent for the second matter, had he, Catanio, terminated the respondent's representation in Gottesman. Respondent's testimony in this regard was not credible. We find, thus, that his failure to prosecute both cases to conclusion was in violation of RPC 1.1(a), RPC 1.3 and RPC 3.2. We agree, however, with the DEC's dismissal of the charge that respondent violated RPC 3.4. The case never reached the discovery stage.

With regard to RPC 1.4, there is evidence that respondent never advised Catanio of the important aspects in either Gottesman or Zhune. Indeed, Catanio testified that, when he retained respondent in Zhune, respondent failed to advise him of the dismissal in Gottesman, which had been entered by the trial court months earlier. Here, respondent's actions were both a failure to communicate, in violation of RPC 1.4, and a misrepresentation by silence, in violation of RPC 8.4(c). See Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). The allegations of RPC 3.3 and RPC 4.1 are so similar in nature that they should be subsumed in the above findings.

As to the alleged violation of RPC 1.16(d) for respondent's failure to turn over the file to Catanio upon termination of the representation, respondent could not remember if he ever gave the file to Catanio. However, Catanio specifically recalled making arrangements with respondent's office to obtain copies of the file. Respondent never did so.

Nevertheless, respondent simply "dropped the ball" on this issue as well, by failing to make the files available to Catanio — who was willing to pay for the copying costs — or to his new attorney. Based on Catanio's unrefuted testimony, we should find a violation of RPC 1.16(d).

Finally, in regard to all five of the within matters, respondent's gross neglect unquestionably rose to the level of a pattern of neglect in violation of RPC 1.1(b).

In sum, respondent's overall misconduct encompassed gross neglect, pattern of neglect, lack of diligence, failure to communicate and failure to expedite litigation in all five matters. Respondent made misrepresentations in three of the matters, including one in his certification to a trial court. Respondent also failed to return the files to the client or client's counsel in three of the matters and failed to cooperate with the ethics authorities in three of the matters.

Conduct of this sort will ordinarily result in a three-month suspension. See, e.g., In re Peluso, 156 N.J. 545 (1999) (three-month suspension for gross neglect in six matters, pattern of neglect, failure to abide by a client's decision, lack of diligence, failure to communicate, failure to explain matter to client in order to make an informed decision, recordkeeping deficiencies and failure to deliver file upon termination of the representation in one of the matters); In re Weinstein, 144 N.J. 367 (1996) (three-month suspension imposed where, in four matters, the attorney exhibited a pattern of gross neglect, lack of diligence, failure to communicate and a pattern of misrepresentation in the matters. The

attorney also failed to turn over a file in one case and failed to cooperate with the disciplinary authorities). Due, however, to respondent's pattern of misrepresentations in several matters, we unanimously determined that a six-month suspension is the more appropriate degree of discipline. See, e.g., In re Bosies, 138 N.J. 169 (1994) (six-month suspension for gross neglect in three matters, pattern of neglect, lack of diligence in three of the matters and misrepresentations and conduct prejudicial to the administration of justice in two of the matters. The attorney also failed to communicate with the client in one of the matters and violated the scope of the representation in two of the matters.)

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

Dated: 5/10/00

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

In the Matter of William F. Aranguren
Docket No. DRB 99-276

Argued: **December 16, 1999**

Decided: **May 10, 2000**

Disposition: **Six-month suspension**

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Cole		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
Peterson		X					
Schwartz		X					
Wissinger		X					
Total:		9					

Robyn M. Hill 9/20/00
Robyn M. Hill
Chief Counsel