SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 08-362 and 08-363
District Docket Nos. XII-06-008E,
VC-05-003E, VC-05-023E,
and VC-05-043E

IN THE MATTERS OF	:
RICHARD M. ROBERTS	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 19, 2009

Decided: April 7, 2009

Bruce H. Bergen appeared on the matter under Docket No. XII-06-008E. JoAnn J. Giger appeared on the matters under Docket Nos. VC-05-23E and VC-05-003E. Arthur S. Horn appeared on the matter under Docket No. VC-06-0043E.

Thomas R. Ashley appeared on behalf of respondent.

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

These matters were before us on a recommendation from the District XII Ethics Committee ("DEC XII") that respondent be reprimanded for his misconduct in one client matter (DRB 08-362) and a recommendation from the District VC Ethics Committee ("DEC VC") that respondent be suspended for six months for his misconduct in three client matters (DRB 08-363). We have

consolidated them for disposition. We determine that a three-month suspension is the proper discipline for the totality of respondent's conduct.

Respondent was admitted to the New Jersey bar in 1971. At the relevant time, he maintained a law office in West Caldwell, New Jersey.

In 1993, respondent received a private reprimand for failure to provide his client with a writing setting forth the basis or rate of his fee, failure to reinstate his client's complaint after its dismissal until after the client filed a grievance, and failure to keep the client informed about the status of his matter or to comply with his numerous requests for information. In the Matter of Richard M. Roberts, DRB 93-342 (November 23, 1993).

In 2002, respondent was admonished for failure to provide his client with a writing setting forth the basis or rate of his fee. In the Matter of Richard M. Roberts, DRB 02-148 (July 8, 2002).

I. DRB 08-362 (DISTRICT DOCKET NO. XII-06-008E)

This matter was before the DEC XII on a referral from the district fee arbitration committee (XII-05-012F), pursuant to R. 1:20A-4. The complaint charged respondent with violating RPC

1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter) (cited in the complaint as RPC 1.4(a)). Respondent failed to timely file a brief in the appeal of his client's criminal conviction and prison sentence. At the ethics hearing, the presenter withdrew the charge of a violation of RPC 1.4(b) because he was unable to locate the client to have her testify.

The facts of this matter are as follows:

On December 19, 2003, Tanaugee Lynch retained respondent to take over from the public defender's office the appeal of her brother Edward's criminal conviction. The fee agreement called for a $4,000 retainer, with a minimum fee of $15,000. On September 18, 2000, Edward had been convicted of first degree attempted murder, second degree possession of a weapon for unlawful purpose, and third degree possession of a weapon. He was sentenced to thirty-five years' imprisonment and required to serve eighty-five percent of his sentence, before parole eligibility.

On March 31, 2003, the public defender's office had filed an appeal on Edward's behalf. On February 26, 2004, respondent filed a substitution of attorney form in connection with the appeal.

The appellate division scheduling order required the filing of the appellant's brief and appendix by April 19, 2004. By letter dated April 15, 2004, filed on April 19, 2004, respondent requested a thirty-day extension to file the brief and appendix, claiming that he had been on trial for the last month and had not been able to complete the brief. Presumably, the extension was granted because, on May 10, 2004, respondent filed a motion for another extension. In support of the motion, respondent's certification averred that, in anticipation of writing the brief, he had reviewed the applicable rules, statutes, and the defendant's contentions. Since that time, respondent contended, he had been on trial in Essex County in the matter of State v. Errol Petgrave and had been "answerable" to judges in the New Jersey District Court. The appellate division granted the extension to June 18, 2004.

On June 17, 2004, respondent filed yet another motion for an extension. Respondent's certification stated that, since seeking the May 2004 extension to file the brief, he had been on trial in Essex County Superior Court in the matter of State v. Dawud Smith, "answerable" to judges in the New Jersey District Court. Therefore, he claimed, he had been unable to complete the brief in the allotted time. The appellate division extended the filing date to July 19, 2004.

On August 24, 2004, the court dismissed the appeal on its own motion, based on the appellant's failure to file a timely brief.

On October 8, 2004, respondent filed a Notice of Motion to Restore Appeal, together with a certification. Among other things, respondent certified that, since requesting his last extension, "in anticipation of writing brief [sic] he reviewed the applicable rules, statutes and defendant's contentions with reference to the judgment and sentence," had several trials in Essex County, and was also "answerable" to judges in Union, Middlesex, Monmouth, and Ocean Counties. Respondent added that, because he had an "overly heavy workload" and was a solo practitioner, he had been unable to complete the brief within the extended time.

By order filed November 3, 2004, the court denied respondent's motion and noted that no date for an extension had been requested. The court ruled, however, that the defendant "may serve and file his brief with a motion to file nunc pro tunc. Any delay and the timing of that application may be significant."

On August 15, 2005, attorney Paul Bergrin filed a substitution of attorney form to take over Edward's appeal. On that same date, Bergrin's firm filed a Notice of Motion to

Vacate Dismissal and Reinstate Appeal. Among other things, Bergrin's certification in support of the motion noted that the trial transcripts were voluminous and that the issues to be briefed were likely to be complex. He requested ninety days to file and serve the appellant's brief and appendix.

By order filed September 15, 2005, the appellate division found the request for an additional ninety-day extension excessive. It denied the motion, without prejudice to new counsel's filing a motion for reinstatement of the appeal and for leave to file the brief nunc pro tunc.

On October 18, 2006, Edward's appeal was reinstated.

Respondent testified that he is currently a sole practitioner, has been practicing law for approximately thirty-six years, and specializes in criminal law. He worked as an assistant prosecutor from 1971 through approximately 1981 and tried hundreds of cases. Later, as a defense attorney, he also tried hundreds of cases.

As to his handling of Edward's appeal, respondent testified that he had ordered the trial transcripts and had obtained the file from the attorney who had represented Edward at the trial. At some point in December 2003, he had asked attorney Ilene McFarland to draft the appellate brief. McFarland worked for the firm of Harkavy, Goldman and Caprio, a firm that also

specialized in criminal law. Respondent shared office space with that firm. Respondent had known McFarland for three or four years at that time and believed her to be a very dedicated and competent young attorney. He had used her help on other occasions. He did not recall whether they had a financial arrangement, but believed that he had offered to pay her and that she had declined any compensation.

According to respondent, he read most of the transcripts and had a sense of what the legal issues were. He, therefore, went over the basic aspects of the case with McFarland, informed her about the general format of an appeal, told her to read the transcripts "from beginning to end," and advised her on how to handle the appeal.

Although McFarland did not testify at the ethics hearing, she executed a certification to corroborate some of respondent's testimony. Her certification stated, in relevant part, that respondent had contacted her "[i]n or around December 19, 200[3]" to write an appeal in Edward's matter. McFarland considered her assistance "to be a favor" to respondent and did not intend to submit a bill to him for her services. She admitted that she did not have a great deal of experience in criminal law, but was confident that she "could get the job done."

McFarland recalled that, after a few months, respondent's secretary had contacted her about her progress on the brief, which she had not yet started because of the demands of her employer. Although McFarland was concerned about completing the assignment, she was still willing "to try to get the job done." McFarland was under the impression that respondent would be able to obtain "unlimited extensions for the brief as a matter of right."

Over the next few months, McFarland realized that she was "in over [her] head," did not have the necessary experience or knowledge to write the brief, and did not have the time to perform the research necessary to write it. She admitted to herself and to respondent that she was unable to write the brief.

Respondent testified that, during that same time period, he was having problems with his wife. They had been together for about twenty years, but had been married for only a few years. His wife was smoking marijuana on a daily basis and counseling did not help her. According to respondent, his wife "dropped out" of his life, his son's life, "everybody's life." She was addicted to marijuana and pain-killers, stole a doctor's "scripts" to write herself a prescription, and took pills from his son, who had injured his knee. Her problems started years

before 2003 and "escalated upward." She finally sought help by attending "NA" and "AA" meetings but, in his opinion, she "still wasn't right." He, too, sought counseling.

Respondent claimed that, in June 2004, he was being treated for depression and believed that he could not properly represent his clients in trials.[1] Respondent asked the presiding judge to take him off of the trial list until he was "able to get back on [his] feet." Thereafter, he was taken off the trial list for approximately three months, during the summer of 2003. He did not notify the appellate division of these personal problems because, he claimed, he was embarrassed by them.

Respondent stated that he had also contacted the State Bar Association Lawyers' Assistance Program ("LAP"), which recommended a psychologist to treat him and his wife. According to respondent, his wife would not give the psychologist permission to write a letter on respondent's behalf because they

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[1] Respondent's doctor's letter shows that his problems arose in 2003. A June 24, 2003 letter from Howard Schwartz, M.D. to Judge Falcone states that respondent had first consulted with him, on June 10, 2003, for symptoms that included anxiety, depression, insomnia, guilt feelings, episodes of tearfulness, and an inability to concentrate. The doctor opined that respondent's symptoms were related to his "intense marital stress" and should abate as issues were addressed. The doctor added that respondent was "unable to function responsibly in the duties of his profession at this time," but added that, with regular psychotherapy, respondent would be able to return to his usual level of functioning in the fall.

were both being treated by him. Respondent recalled being treated by Dr. Schwartz for a little over a year. Later, he was treated by another psychologist and then by a psychiatrist for six to eight months. He ended his treatment in 2005.[2] He took Wellbutrin for his depression.

Respondent explained that it was during that period that he had undertaken Edward's representation. He had difficulty concentrating and had feelings of inefficiency at the time. Despite his difficulties, however, he continued to practice law. Although he stopped doing trial work, he claimed that, among other things, he continued to file motions and to engage in discovery. He did not recall referring any other cases to other attorneys, as he had to McFarland.

The presenter pointed out, in his closing statement, that respondent's letter from Dr. Schwartz was dated June 24, 2003, six to seven months before respondent entered into a retainer agreement with Edward's sister (December 2003). He added that respondent was back on the trial calendar, when the agreement was signed. He noted that respondent had not apprised the

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[2] At oral argument before us, respondent was asked if he was still receiving treatment. Hesitating at first, he ultimately replied "yes."

appellate division of his problems, even though he had brought it to the attention of the trial court.

According to respondent, after he enlisted McFarland's assistance, he frequently spoke with her about Edward's, case but did not follow up with her progress or ask to see her work. She had assured him that the work would be done. He admitted that he had failed to properly oversee her work.

After Edward's sister retained Bergrin to take over the appeal, respondent turned over all of his records to Bergrin and discussed the issues in the case with him.

Paul Bergrin testified, at the ethics hearing, that he specializes in criminal litigation and appeals. He was retained by Edward's family to take over the case because he had represented Edward in the past. With the assistance of respondent's office, Bergrin was able to get Edward's appeal reinstated, whereupon he filed the appellate brief. Edward's conviction was ultimately affirmed. Bergrin stated that respondent's inaction did not contribute to the outcome of the case. He added that respondent "went well beyond the call of duty" in helping him prepare the case. Respondent spent fifty to seventy-five hours reviewing transcripts and conducting research.

Respondent's counsel argued that respondent's conduct did not amount to gross neglect or lack of diligence because his client's interests were not prejudiced. Counsel noted that respondent's professional and ethics history are outstanding; that respondent sought professional treatment for his emotional problems; and that respondent is capable of meeting the standards of the legal profession. Under these circumstances, counsel contended, even if respondent violated any Rules of Professional Conduct, his conduct was aberrational and not worthy of any discipline.

The DEC XII found that respondent permitted Edward's appeal to be dismissed for failure to timely file a brief and then neglected to have the appeal reinstated nunc pro tunc.

The DEC XII found clear and convincing evidence that respondent engaged in gross neglect and lack of diligence in his handling of the Edward Lynch matter and recommended a reprimand. The DEC XII did not find, however, that respondent's emotional disability was supported by "competent medical proofs," in that neither the psychiatrist nor the psychologist with whom respondent had consulted had testified at the ethics hearing. Although the DEC XII did not doubt respondent's testimony about the problems in his personal life or that the problems may have affected his ability to attend to his professional obligations,

it could not judge, without medical proofs, "whether these problems rendered him 'unable to tell right from wrong or to understand the nature and quality of his acts.'"

The DEC XII's observations of respondent, during the ethics hearing, led it to question whether respondent had fully recovered from his emotional disabilities. It, therefore, recommended that respondent continue counseling through LAP until discharged by the counselor.

II. DRB 08-363

This matter came before us on a recommendation for discipline (six-month suspension) filed by the District VC Ethics Committee ("DEC VC"). Three separate complaints charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information); RPC 1.5, presumably (b) (failure to provide a client with a writing setting forth the basis or rate of the fee), RPC 1.7, presumably (a) (conflict of interest – representing a client where the representation is directly adverse to another client); RPC 1.9, presumably (a) (representing a client in the same or a substantially related matter in which the client's interests are

materially adverse to a former client, without obtaining the former client's informed written consent), and (RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

A - THE WALKER MATTER (DISTRICT DOCKET NO. VC-06-0043E)

This matter arose out of respondent's failure to file a petition for post-conviction relief. It was referred to the DEC VC by the fee arbitration committee. At the ethics hearing, Jacqueline Walker testified that her son, Erin Ford, had given her a power-of-attorney ("POA") to assist him in his grievance against respondent.

In 2001, Jacqueline Walker retained respondent to file an appeal of Erin's attempted murder conviction and to represent him on a robbery charge. Jacqueline paid respondent a $7,500 fee and $1,750 for the transcripts. Erin's appeal was denied.

In February 2003, Jacqueline retained respondent to file a motion for post-conviction relief, for which she paid him an additional fee of $3,500. Respondent did not provide her with a writing setting forth the basis or rate of the fee for any of the matters and did not discuss what additional charges she might incur. In all three matters, respondent told Jacqueline the amount of the retainer and added that she would be

responsible for "anything else that came up." Walker received no bills from respondent.

During the course of the following year, Jacqueline talked to respondent several times. At some point, respondent informed her that, when he was finished working on the motion, he would file it, although that the work would take some time. Respondent did not mention that another attorney from his office was working on it.

Approximately one year later, Jacqueline tried to obtain information about the status of the matter, but was unable to reach respondent. Therefore, in February 2004, she made an appointment to meet with respondent. According to Jacqueline, respondent informed her that he had filed the motion and brief and "was waiting for an answer from the court." Neither she nor her son received copies of a motion or brief from respondent.

Later, in March 2004, Jacqueline called respondent's office to request copies of the motion. At that time, respondent's secretary, Tiffany Perez, told her that the documents had not been filed. She stated that Jacqueline could have copies of the papers after respondent had proofread and filed them.

Following that conversation, Jacqueline was unable to discuss the matter with respondent or his secretary, despite her repeated attempts to reach respondent.

In June 2004, another attorney, Lessie Hill, contacted respondent on Jacqueline's behalf. Hill received no response to her two letters to respondent. The second letter, sent to respondent by "fax," regular and certified mail on July 7, 2004, stated:

> I called your office and left a message, you didn't respond. A letter was sent to you on June 29, 2004, seeking copies of the post conviction application that Ms. Jacqueline Walker said she paid you $3,500 to file on behalf of her son, Erin Ford.
> You have not responded to my letter. It certainly appears that you do not intend to respond to our request on behalf of Ms. Walker.
> At this time we have no other recourse, but to recommend to Ms. Walker that she immediately contact the Essex County Ethics Committee and file an Ethics Complaint against you. . . .
>
> [Ex.P4.]

Sometime in July 2004, Perez told Jacqueline that respondent had hired another lawyer to write the brief, which the lawyer had failed to do. Perez also told Jacqueline that, if the brief were not finished by September 16, 2004, respondent would refund her $3,500 retainer.

By September 16, 2004, Jacqueline had not received the brief or any other papers concerning the appeal. She requested a refund of her retainer, to no avail. She then retained another

attorney, who filed the motion for her son's post-conviction relief.

Ultimately, Jacqueline filed for fee arbitration, seeking the return of her retainer. Respondent did not appear at the hearing. The fee arbitration committee awarded Jacqueline a full refund of her fee.

Respondent claimed that, during the relevant time, attorney Richard Raines was working in his office.[3] Respondent had assigned Erin's matter to Raines. He blamed Raines for failing to prepare the necessary documents and misleading him about the progress of his work.

Respondent relayed some personal problems that Raines experienced, but added that, notwithstanding Raines' problems, he still believed that Raines was a "fine trial lawyer." Respondent admitted, nevertheless, that the Walker case was his responsibility and that he should have taken control of the situation. He conceded that Raines was under his direct control and suspension.

In his November 8, 2008 response to the grievance, respondent alleged that, once he learned of his "associate's"

[3] Raines has an extensive disciplinary history. He was privately reprimanded in 1993, suspended for six months in 1995, suspended for three months in 2003, and suspended for another three months in 2004. He was also temporarily suspended in 2002.

failure to timely complete the brief, he began working on it on an "expedited basis."

Respondent admitted that he and Jacqueline had discussed filing a motion for post-conviction relief, but denied having told Jacqueline that the motion had been filed. He claimed that, when he told Jacqueline that he was working on the case, he believed that Raines was working on it and that, when he discovered that nothing had been done on Erin's case, he told Perez that they would have to refund Jacqueline's retainer. At the ethics hearing, however, respondent could not explain why Jacqueline had to file for fee arbitration five months after she had been told that she would get her retainer back. He claimed that he did not attend the fee arbitration hearing because he "felt she deserved her money back."

At some point, respondent turned over Erin's file to the new attorney.

Respondent again raised as an excuse his emotional state at the time that he was representing Erin. He stated that, during that period, his wife was experiencing serious psychological problems and "was acting in a bizarre manner." As a result, he, too, began to suffer from psychological problems. He noted that he had been treated by Dr. Schwartz and had been diagnosed with depression. He started seeing another doctor in 2004. He and his

wife also saw a psychologist recommended by LAP, probably in 2004. They met with the person once a week for period of months, until each started seeing other doctors.[4]

As in DRB 08-362, respondent reiterated that he had asked the presiding judge to remove him from the trial calendar because he did not believe that he could adequately represent his clients in trials. He was removed for a period of two or three months, but could not recall whether that had occurred in 2003 or 2004. He otherwise kept his office open and remained available to clients.

In mitigation, respondent's counsel offered that, because the Walker post-conviction relief motion went forward with another attorney, there was no injury to the client; that respondent acknowledged that it was his duty to file the motion for post-conviction relief; and that respondent suffered from psychological problems. Counsel, therefore, argued that no discipline was warranted.

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[4] The DEC IV issued a protective order to maintain the confidentiality of all medical records submitted by respondent or his counsel. Respondent, however, did not offer any documentary evidence, other than the Schwartz letter, which had been previously submitted in connection with the Edward matter, for which no protective order was issued.

B. THE CHILL MATTER (DISTRICT DOCKET NO. VC-05-0023E)

Gail Chill testified that, on October 20, 2003, she and her husband, Richard, retained respondent to press charges against an adult male, Daniel Moschello, who had been involved "in a drug relationship" with their minor daughter, Allison. The Chills paid respondent a $2,500 retainer. Respondent had not represented the Chills before and did not provide them with a writing setting forth the basis or rate of his fee.

The Chills hoped that respondent could obtain a restraining order prohibiting Moschello's contact with their daughter, who was fifteen at the time. Moschello was ten years older than Allison.

Around that same time, the Chills had a juvenile matter pending against their daughter. Their hope was to get her into a drug treatment program. Gail stated that either she or her husband had informed respondent about the juvenile action and had asked for his assistance in that matter as well.

The Chills gave respondent six audio tapes of conversations between their daughter and Moschello. The Chills had previously contacted the Essex County Prosecutor's Office to determine whether such recordings would be admissible. Respondent told the Chills that he would listen to the tapes and that he would be able to file "some sort of complaint against Mr. Moschello."

Not only did respondent not pursue any action against Moschello, but he also failed to reply to the Chills' requests (via telephone and letters) for information about the matter and to communicate with them on a regular basis.

Gail claimed that, at some point, respondent informed Richard that he had turned over the tapes over to the Essex County Prosecutor's Office and that the Chills should wait to hear what action that office intended to take.

Presumably, during that same conversation, respondent advised Richard to file a complaint against Moschello in municipal court. The next day, Perez told Richard that respondent would accompany him to file the complaint. Although Richard waited all day, respondent did not show up. Perez later called Richard and told him that he should not file the complaint until he heard from the prosecutor's office.

The Chills' last contact with respondent was on November 5, 2003, when he appeared on Allison's behalf in an unrelated matter (violation of probation). Gail believed that Richard had arranged for respondent to appear on that date.

Prior to Allison's matter being called, respondent was summoned to another courtroom. Before he left, he told the Chills that Allison would not be going home that night. The Chills understood that Allison was being ordered into a long-

term treatment facility. Gail learned, however, that the judge had determined to place Allison into the Essex County Juvenile Detention Center. Before respondent returned, a public defender with whom the Chills were acquainted intervened on their behalf and succeeded in having Allison placed into a treatment facility. Gail did not recall respondent's involvement in that placement.

Respondent failed to reply to the Chills' requests for advice and information about the status of the matter. On November 2, 2003, Gail sent a fax to respondent inquiring whether she should forward a letter to Moschello, a copy of which she attached for respondent's review. Respondent did not reply to Gail's letter.

After respondent's November 19, 2003 appearance at a status conference to have Allison's drug treatment program extended, Gail tried to contact respondent. Perez informed her that respondent had appeared in court on Allison's behalf. Perez did not provide Gail with any evidence of his appearance. Gail obtained that information directly from the court. Gail believed that, between October 20 and November 5, 2003, her husband may have spoken to respondent once or twice. However, when she tried to reach respondent, he never returned her calls.

In a December 1, 2003 letter to respondent, the Chills summarized their efforts to reach him:

> I have called your office on numerous occasions (at least once a week) asking to speak to you concerning the status of this case. You have never returned any of my calls. Each time I call, I am told by your secretary, Tiffany, that the Prosecutor's office [sic] is handling this. Why, if we retained you, is this matter supposedly being handled by the Prosecutor's office [sic]? If, in fact, the Prosecutor's office [sic] is involved, why has no one from that office contacted us? More importantly, why are you not following up with that office and at least returning my calls?
>
> [Ex.2.]

On December 10, 2003, the Chills sent respondent a second letter, by certified mail, complaining that (1) they had not received any information from him since they had retained him, other than hearing from his secretary that the prosecutor's office was looking into the matter; (2) they had no proof of the prosecutor's office's involvement; and (3) they had retained respondent, not the prosecutor's office, to handle the matter. The Chill's requested a status update. Respondent did not reply to that letter as well.

By letter dated December 20, 2003, the Chills informed respondent that, on December 18, 2003, they had contacted the prosecutor's office and had been informed that it had no file on Allison or Moschello and no audio tapes. The Chills complained

that respondent still had not replied to their telephone calls and letters and requested the immediate refund of their retainer and the return of their audio tapes. Once again, respondent did not reply to the Chills' letter.

Ultimately, the Chills filed for fee arbitration. Respondent neither replied nor appeared at the fee arbitration hearing. The fee arbitration committee ordered respondent to return the Chills' retainer, which he ultimately did.

Perez testified that she had worked for respondent for approximately eight years as his office manager/legal secretary. All of her contacts in the Chill matter had been with Richard. She did not recall seeing or talking to Gail.

According to Perez, Richard had dropped off the audio tapes at respondent's office. Perez believed that respondent had listened to the tapes and had her listen to a few of the inaudible tapes as well. According to Perez, a couple of months after respondent received the tapes, he told her to mail them to the Essex County Prosecutor's Office. Although Perez planned to send them, she never did, but thought that she had. She did not inform respondent that she had not mailed out the tapes until the day she met with the ethics investigator/presenter. According to Perez,

> I didn't tell him until this all came about, that actually the day Ms. Giger [the

presenter] came in, I just -- it just slipped my mind, I didn't actually find the tapes, I forgot all about them, because they were in a box, and one day, while I was cleaning the office, I saw the tapes, and then, at that point, I felt like there was nothing I could do about it, it was just -- it was like years later, it was too late, and I found the tapes, and then Ms. Giger came to the office, and while she was speaking to me, like wow, those tapes are in my box, and I felt bad . . . .

[3T82-21 to 3T83-6.][5]

Perez claimed that, after the presenter left, she informed respondent that she had the tapes and was going "to run the tapes out to Miss Giger, and when I came back in the office, I explained to [respondent] what happened." She stated that she went out to the parking lot and turned the tapes over to the presenter on that same day.

During cross-examination, the presenter questioned Perez about the tapes and about their conversation during the January 2006 interview:

Q. And isn't it true that you told me that the tapes were by your desk, that Mr. Chill had delivered the tapes, and that the tapes had been by your desk?
A. No.
. . . .

[5] 3T refers to the transcript of the May 15, 2008 DEC VC hearing.

A. No. Why would I have -- if that's the point, then I would have given them to you at that point. I went out to the parking lot to give them to you.

Q. Do you recall telling me the tapes had been by your desk, that Mr. Roberts had listened to a few, and that you were positive that Mr. Chill had picked up the tapes, do you recall that? . . .
A. If I would have told you that I was positive he picked up the tapes, why would I say they're next to my desk? No, I didn't.
. . . .
Q. Do you recall that after I left your office, you called me on my cell phone, and told me there was something you needed to tell me about the audiotapes?
A. Yes.
Q. And do you recall that I then turned around, and came back to your office?
A. Yes, yes, that's exactly what happened.
Q. You didn't rush out to the parking lot, I was actually gone, you called me?
A. . . . . That's exactly what happened.
. . . .
Q. And when I came back, you told me that you had spoken to Mr. Roberts about the audiotapes . . . you had told me that Mr. Chill had picked up the tapes, but that they in fact were still by your desk, does that accurately represent what we discussed?
A. No . . . . I didn't get into detail with him because it was like a really quick thing
. . . .
I should have come to him and told him, Look, [sic] Richie, I messed up, I didn't send out the tapes. I just kind of kept that.
. . . .
I know you asked me "Had they been sent to the Prosecutor's Office", I told you, "Yes".
. . . .
Q. Assuming your recollection is correct, you knew at that time what you were telling me was not true?
A. Right.

Q. But you told it to me anyway, that in fact that's what you said?
A. Yeah.

[3T88-19 to 3T93-4.]

Perez testified that she had become very sick at the end of November 2003, requiring her hospitalization and a leave of absence. She was not in the office from late November until the end of December 2003. She, therefore, had no knowledge of the Chills' efforts to contact respondent during that time period. When she returned, there was a large stack of unopened mail waiting for her.

For his part, respondent admitted that he did not have a formal retainer agreement with the Chills. He recalled meeting with both Gail and Richard and being retained to handle a pending juvenile matter and to stop their juvenile daughter from seeing an adult male.

According to respondent, he told the Chills that they could file a complaint against Moschello in municipal court, for which they would not need him or, in the alternative, to have respondent call the prosecutor's office to see if that office would take action against Moschello. The Chills had chosen the latter option.

Respondent claimed that, shortly after their meeting, but sometime before the end of the month, he had telephoned the prosecutor's office and spoken to an assistant prosecutor, who recalled speaking to the Chills and declining to investigate their case. Respondent did not know why that office had declined to proceed against Moschello. Respondent stated that he had listened to the tapes, which were not pleasant, and had understood that the Chills wanted "something to happen to this person." According to respondent, when he had asked the assistant prosecutor if her office wanted to listen to the tapes, she had told him that her office had decided not to pursue the matter. Allison's file did not contain any notation that respondent had called the prosecutor's office.

Respondent recalled that he had instructed Perez to forward the tapes to the prosecutor's office, right after Richard had brought them in. Respondent also recalled notifying the Chills "right away" about the prosecutor's office's decision.

According to respondent, the fee he charged the Chills covered his handling of the juvenile case, his assistance with the prosecutor's office, and his advice to the Chills on how to file a criminal complaint themselves. Respondent admitted that, if he had given the Chills a retainer agreement, there would not

have been a misunderstanding about the scope of his representation.

As to his appearance at the November 5, 2003 juvenile matter, respondent explained that he had been called to a different courthouse, where "the jury had come back" with a verdict in a case in which he was the defense attorney. On returning, he had participated in the resolution of Allison's matter. He admitted, that in his absence, a public defender had negotiated with the prosecutor. He stated, however, that he still had to clear up some outstanding problems regarding Allison's admission into a residential "detox" program.

According to respondent, he later appeared at a status conference on Allison's progress. He recalled that the judge had notified the attorneys of that date, during the first appearance, and that the parties were not required to attend. He did not independently notify the Chills of the date of the status conference.

Respondent claimed that, on a few occasions, Richard had come to his office to discuss Allison's cases. He admitted that he never replied to Richard's letters of December 1, December 10, and December 20, 2003, because he had not read them "in a timely fashion;" when he finally did, the matter had been resolved.

Respondent disputed that he had been retained for the purpose stated in Richard's December 1, 2003 letter (to press charges against Moschello). Respondent stated, "My understanding was clear, it was a case against their daughter, they wanted me to handle that case, and I was as clear as I could possibly be . . . as a private attorney, I cannot institute criminal actions, and I gave them two alternatives," to file a complaint themselves in municipal court or to call the prosecutor on their behalf.

Respondent admitted that he does not keep billing records for criminal cases, unless the case involves white-collar crime. He did not have any notes in Allison's file because it was a simple case and because he knew its status from correspondence received from the Chills.

As to his failure to meet Richard to file a complaint in municipal court, respondent recalled that he was to meet Gail and testified:

> I remember I was going to meet her, I hear what she said, I remember I was going to meet her in municipal court, and as I recall, I was stuck in Superior Court, and I couldn't get out in time to meet her, but the other part, because we had exhausted the prosecutorial way of doing it, and the only thing left was to file a municipal court complaint, and I don't know . . . where she got that information from.

[3T157.]

Respondent admitted responsibility for not following up with Perez about sending the tapes to the prosecutor's office, after he started receiving letters from the Chills.

C. THE MUSLIM MATTER (DISTRICT DOCKET NO. VC-05-0003E)

Grievant Sharif Muslim was incarcerated at the time of the DEC VC hearing. Respondent's counsel and the presenter stipulated the following few facts pertaining to this grievant.

In August 2000 and February 2001, Muslim retained respondent to represent him in two criminal matters, a New Jersey drug offense and a New York drug offense. Respondent did not provide Muslim with a writing setting forth the basis or rate of his fee. Muslim paid respondent a $3,500 retainer for each matter. Respondent did not complete either matter.

In August 2004, respondent filed a divorce complaint on behalf of Muslim's wife. Muslim then filed a cross-motion to disqualify respondent, based on a conflict of interest. By order dated March 18, 2005, the court granted the motion to disqualify respondent, citing violations of RPC 1.7 and RPC 1.9.

Respondent testified that Muslim's wife, Dawn Rouse, had retained him to represent Muslim in the two criminal matters. He had known Rouse since she was a little girl and had represented

her and her family for many years. Respondent believed that he had represented Muslim in an earlier New Jersey drug case.

Because Muslim was incarcerated at the time of respondent's retention, most of respondent's communications with him were through Rouse. Respondent appeared in court on Muslim's behalf, at least in the New Jersey matter.

Respondent claimed that, during the pendency of the two matters, Muslim had attempted to kill Rouse.[6] As a result, respondent stated, he "could no longer in good faith continue to represent Sharif Muslim" in either matter. Respondent telephoned Muslim to explain why he would no longer represent him.

Months later, Rouse asked respondent to represent her in her divorce matter against Muslim. Although respondent does not normally handle divorce matters, he agreed to represent her on a pro bono basis because Rouse was "hysterical, she was afraid of her husband."

Respondent did not obtain a waiver for the conflict of interest. He did not recognize a conflict because "anything that I had done with Mr. Muslim was public record, and any past matters I had done for Dawn or for him in civil things were like any other married couple or a couple going together, I honestly

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[6] The record is silent on whether Muslim was out on bail or had been released at the time of the alleged attempt.

didn't see any conflict." It was respondent's belief that neither Muslim nor Rouse had made any representations to him that would have affected his ability to effectively represent Rouse; he had no special knowledge that would have given either one an advantage over the other. He stated that, once the court ruled that a conflict existed, he stopped representing Rouse.

Notwithstanding respondent's contention that Rouse had paid respondent's fee for Muslim's representation, it was Muslim who filed for fee arbitration. Respondent did not participate in the fee arbitration proceeding. The fee arbitration committee ordered respondent to return $7,000 to Muslim, the total fee for both matters. Initially, the two checks sent to Muslim were returned for insufficient funds, but respondent ultimately refunded the retainer.

As to the Walker matter, the DEC VC found clear and convincing evidence that respondent lacked reasonable diligence in representing the client, failed to adequately communicate with the client, and made misrepresentations to Walker.

In the Chill matter, the DEC VC found that respondent engaged in gross neglect and lack of diligence, failed to adequately communicate with the client, and failed to provide the client with a writing setting forth the basis or rate of his fee.

Finally, in the Muslim matter, the DEC VC found that respondent engaged in a conflict of interest, in violation of RPC 1.7 and RPC 1.9. The DEC VC also found that respondent failed to provide the client with a writing setting forth the basis or rate of the fee.

The DEC VC considered respondent's personal, family, and professional problems raised in the Walker matter. The DEC VC found, however, that respondent's conduct in all three cases was willful and that the evidence produced at the hearing established a "pattern of willful disregard of the Rules of Professional Conduct," as shown by respondent's failure to adequately communicate with his clients and to be reasonably available to them. The DEC VC further found that, in certain instances, respondent demonstrated a pattern of neglect.

The DEC VC found the following aggravating factors: (1) respondent was disciplined before for failure to give his clients fee agreements (a private reprimand in 1987 and an admonition in 2002, only one year before the Walker matter); (2) the grievants had to file for fee arbitration in order to have their retainers refunded; and (3) despite respondent's acknowledgment of his personal and professional problems, he continued to practice law and take on new cases. As to this latter factor, the DEC VC noted that respondent failed to obtain

the support or resources available to him offered by the Supreme Court and the New Jersey Bar Association, failed to refer existing and new cases to colleagues or to ask for their assistance in handling the cases, and failed to hire an associate or a per diem attorney to help with his caseload.

The DEC VC found that respondent's failure to take any such actions was puzzling, in light of the fact that he had asked the presiding judge to remove him from the trial list and was, therefore, aware that his personal and professional problems were affecting his ability to properly represent his clients.

The DEC VC also found that respondent's conduct established a pattern of neglect, as evidenced by the absence of retainer agreements, his failure to adequately represent the clients, his lack of reasonable diligence, his failure to communicate with clients, and his reliance on staff not adequately trained to handle the matters.

As to the charge of misrepresentation, the DEC VC found that Jacqueline's testimony that respondent had told her that he had filed the brief was more credible than the testimony of respondent, who denied telling Jacqueline that the motion and brief had been filed.

The DEC VC recommended a six-month suspension, with conditions; courses on law office management, on the Rules of

Professional Conduct, and on legal ethics; reinstatement conditioned on proof that he has attended these classes during his suspension; and, on reinstatement, a proctorship by an attorney appointed by the Court.

Following a de novo review of the record, we are satisfied that the DEC XII's and the DEC VC's conclusions that respondent was guilty of unethical conduct are fully supported by clear and convincing evidence.

In DRB 08-362 (the Edward Lynch matter), respondent failed to file an appellate brief, despite having received several extensions to do so, permitted the case to be dismissed, and failed to file a motion and brief nunc pro tunc, as directed by the appellate division. His conduct in this regard constituted lack of diligence and gross neglect.

Respondent blamed his alleged emotional problems for his inattention to Edward's matter. However, as the DEC XII noted, respondent had already been restored to the active trial calendar, when he undertook Edward's representation. It is noteworthy that respondent failed to supply the DEC XII with documentary evidence to support his contention that the presiding judge had relieved him of his trial responsibilities for approximately three months. Likewise, respondent supplied no documentary evidence to support his continued "anxiety and

depression" during the time period he was Edward's attorney of record. Respondent submitted only a letter, purportedly from Dr. Howard L. Schwartz to the presiding judge, dated June 24, 2003.

In addition, respondent never certified that he had such problems, when he sought extensions from the appellate division. His certifications mentioned only that he was unable to complete the brief in a timely fashion because of his workload and because he was a sole practitioner. His letter and certifications to the appellate division (May 10, 2004, June 17, 2004, and October 8, 2004) were submitted after he purportedly asked McFarland to write the brief. Yet, he never mentioned that he had assigned the brief to another attorney.

Either respondent's letter and certification to the appellate division were not truthful about the reasons for his delay in filing the brief or his testimony to the DEC XII was not truthful, when he blamed the delay on his emotional state and on McFarland. The latter scenario is certainly much more serious because it required another individual to falsely certify that she was responsible for the delay. In either case, we find, as an aggravating factor, that respondent made a false statement to a tribunal.

We conclude that respondent violated RPC 1.1(a) and RPC 1.3 in the Edward Lynch matter.

As to the matters under DRB 08-363, we find that respondent violated RPC 1.5(b) in the Walker, Chill, and Muslim matters by failing to provide his clients with writings setting forth the basis or rate of his fee. The Chill matter underscores the pitfalls of omitting such a writing. Gail Chill believed that respondent was retained, first and foremost, to help keep Moschello away from her daughter. While, initially, respondent admitted that the Chills retained him to help them to achieve that end, by either involving the prosecutor's office or filing a complaint against Moschello in municipal court, he later claimed that his fee was for the juvenile matter alone. In the Muslim matter, respondent asserted that he had "possibly" represented Muslim in the past. He offered no evidence that he had regularly represented Muslim, a situation that, under RPC 1.5(b), would not have required a writing specifying the rate or basis of the fee.

Respondent also failed to communicate with Jacqueline and the Chills. He failed to keep Jacqueline informed about the status of the matter and failed to return her telephone calls. In the Chill matter, he did not inform the Chills about an upcoming status conference, did not return their telephone calls, and did not reply to their letters.

In Walker, respondent also violated RPC 8.4(c). Although respondent denied telling Jacqueline that he had filed the motion for post-conviction relief, the DEC VC found Jacqueline's testimony on this point more credible than respondent's. Because the DEC VC had the opportunity to observe the demeanor of the witnesses, the DEC VC was in a better position to assess their credibility. We, therefore, defer to the DEC VC with respect to "those intangible aspects of the case not transmitted by the written record, such as witness credibility . . . ." Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

In Walter, as in Edward's matter, respondent blamed another attorney for not performing the services for which he had been retained. He provided no evidence, however, that he had hired that attorney to draft the motion papers. In addition, he never mentioned to Jacqueline that another attorney was working on the case. In any event, even if we were to accept respondent's explanation that he assigned the matter to another attorney, respondent is still guilty of gross neglect because he failed to ensure that the work was completed. Under either scenario, he demonstrated lack of diligence and gross neglect. That Jacqueline was able to retain another attorney to move for post-conviction relief does not absolve respondent from a finding that he engaged in gross neglect.

As to the Chill matter, it is true that respondent performed some services on their behalf. Without a retainer agreement, however, there was no meeting of the minds as to the services that respondent was retained to perform. Respondent himself seemed unclear about the scope of his responsibilities in the matter. On one hand, he claimed that he was retained only for the juvenile matter; on the other hand, he admitted that the Chills also expected his assistance with the prosecutor's office and with the filing of a municipal court complaint. Respondent's confusion extended to his explanation about his involvement in the municipal court matter. Gail clearly testified that her husband was waiting for respondent to help him file the complaint. Yet, respondent testified that it was Gail that he intended to meet at the municipal court, but he was "stuck in Superior Court."

As in the Edward Lynch and Walker matters, respondent attempted to deflect the blame in this matter. He faulted his secretary for not having sent the tapes to the Essex County Prosecutor's Office. However, neither respondent's nor Perez's testimony was believable in this regard. Their testimony differed as to when respondent instructed Perez to send the tapes. In fact, Perez changed her testimony during cross-

examination and later admitted that she had made misrepresentations to the ethics investigator.

Respondent's testimony that he had spoken to someone from the prosecutor's office was uncorroborated and unreliable. He could not recall specifically to whom he had spoken or when the conversations had occurred. Yet, he claimed that the prosecutor's office had declined to pursue the matter. It should be recalled that the prosecutor's office had no access to the tapes. Respondent had earlier testified that the prosecutor's office was aware of the tapes. He remarked, however, that no one from that office recalled having a conversation with him or had any record of Allison or Moschello.

Respondent also testified that he had told the Chills that the prosecutor's office was not interested in pursuing the case, immediately after having been informed of that decision. The Chills' continuing telephone calls and letters asking about the status of the case belie respondent's contention, however. Moreover, respondent's characterization of the tapes -- that they were very "unpleasant" -- casts strong doubt on his contention that the prosecutor's office was ever aware of the tapes. Presumably, that office would not have declined prosecution, had it known about the contents of the tapes.

The more logical scenario is that the Chill matter slipped through the cracks and that even the Chills' letters did not prompt respondent to follow up on the matter. We find, thus, that respondent lacked diligence, in this regard. Because he did take some action on the Chills' behalf, however, we do not find gross neglect in this matter.

Finally, in the Muslim matter, respondent engaged in a conflict of interest by agreeing to represent Muslim's wife in a divorce matter. See, e.g., New Jersey Ethics Opinion 97, 89 N.J.L.J. (August 4, 1966) (barring an attorney from undertaking a divorce action on behalf of the spouse of the attorney's former client). Respondent's conduct in this context violated RPC 1.9 (a) (representing a client whose interests are materially adverse to the interests of a former client). RPC 1.7 does not apply because that rule relates to concurrent conflicts of interests.

In sum, we find that respondent violated RPC 1.5(b) in Walker, Chill, and Muslim, RPC 1.1(a) in Lynch and Walker, RPC 1.3 in Lynch, Walker, and Chill, RPC 1.4(b) in Walker and Chill, RPC 1.9(a) in Muslim, and RPC 8.4(c) in Walker. In addition, we find, as aggravating factors, that respondent made misrepresentations to a tribunal in the Edward Lynch matter, failed to take responsibility for his misconduct by trying to

blame others, and was less than forthcoming in his testimony at the ethics hearing. For example, respondent testified, in the Edward Lynch matter, that he did not recall referring any other cases to attorneys, except for McFarland. Yet, in the Walker matter, he claimed that he turned the matter over to another attorney, Richard Raines.

Respondent offered as mitigation his state of mind at the time that he undertook the above cases. However, he failed to provide any clear and convincing evidence to support his claimed emotional state during the relevant time. We, therefore, reject his contention that his state of mind prevented him from properly representing his clients.

We now turn to the issue of discipline. In a somewhat similar matter, an attorney received a three-month suspension for gross neglect, lack of diligence, failure to communicate with clients, and misrepresentations in two client matters. In re Nealy, 196 N.J. 152 (2008). In the first matter, Nealy had been retained to assume an appeal from a conviction of attempted murder, assault, and weapons violations. The attorney failed to file the brief, resulting in the appeal's dismissal. He also failed to inform the client of the dismissal. He was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation. In a second

matter, the attorney agreed to reopen his client's bankruptcy case to obtain a discharge of tax obligations, but failed to take any action until after the client filed a grievance. The attorney also failed to reply to his client's numerous telephone calls. He was found guilty of lack of diligence and failure to communicate with the client.

In assessing discipline in Nealy, we viewed the criminal nature of the first matter to be a significant factor. The attorney allowed the case to be dismissed and, thereafter, continued to make misrepresentations to the client to lead him to believe that his case was still pending. The client learned that the appeal had been dismissed only after filing a grievance, three years later. The client, therefore, remained incarcerated "under the misapprehension that the attorney was representing his interests." We also considered the attorney's ethics history (a private reprimand and two reprimands) as an aggravating factor.

Generally, however, conduct involving gross neglect, lack of diligence, and failure to communicate with clients results in either an admonition or a reprimand, depending on the gravity of the offenses, the harm to the clients, and the attorney's disciplinary history. See, e.g., In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of

diligence, and failure to communicate with the client; prior admonition for similar misconduct); In the matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file; violations of RPC 1.4(b) and RPC 1.3 found); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In the Matter of Vincenza Leonelli-Spina, DRB 02-433 (February 14, 2003) (admonition for gross neglect, lack of diligence, and failure to communicate with the client); In the Matter of Jeri L. Sayer, DRB 99-238 (January 11, 2001) (admonition for attorney who displayed gross neglect, lack of diligence, and failure to communicate with the client; a workers' compensation claim was dismissed twice because of the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed for her failure to timely file a brief); In the Matter

of Jonathan H. Lesnik, DRB 02-120 (May 22, 2000) (admonition for failure to file an answer in a divorce matter, resulting in a final judgment of default against the client; the attorney also failed to keep the client informed about the status of the case); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis or rate of the fee; prior admonition and six-month suspension); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients). But see In re Wood, 177 N.J. 514 (2003) (censure for attorney who grossly neglected a matter and failed to communicate with his client; the attorney allowed a matrimonial appeal to be dismissed and failed to take any steps to have it reinstated; the attorney had previously been admonished for failure to communicate with a client and had been reprimanded in a default matter for lack of diligence and failure to communicate with a client).

As to misrepresentations, the Court "has consistently held that intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf, and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, the attorney lied to the client about the status of the case; the attorney also exhibited gross neglect); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

As to conflict of interest situations, it is well-settled that, absent egregious circumstances or economic injury to

clients, a reprimand constitutes sufficient discipline. See, e.g., In re Berkowitz, 136 N.J. 134, 148 (1994) (conflict of interest found between clients of partners in the same law firm, due to proximity of first client's commercial property to second client's proposed residential development); In re Porro, 134 N.J. 524 (1993) (attorney represented a developer operating in a municipality where the attorney was both the municipal attorney and the attorney for the sewer authority; the attorney represented those entities at the same time while an associate in the attorney's firm served as counsel to the planning board that approved the developer's subdivision and represented the municipality in a lawsuit in which the sewer authority was a co-defendant); In re Doig, 134 N.J. 118 (1993) (conflict of interest where an attorney undertook the dual representation of two individuals in a business/real estate transaction without obtaining their consent after full disclosure; the attorney also engaged in a misrepresentation and had a prior private reprimand); and In re Woeckener, 119 N.J. 273 (1990) (conflict of interest where an attorney represented his wife in connection with city development at the same time that he was the city attorney). But see In the Matter of Anton Muschal, DRB 99-381 (February 4, 2000) (admonition imposed on attorney who represented a client in the incorporation of a business and

renewal of a liquor license and then filed a suit against her on behalf of another client) and In the Matter of Jeffrey E. Jenkins, DRB 97-384 (December 2, 1997) (admonition for attorney who engaged in a conflict-of-interest situation by continuing to represent husband and wife in a bankruptcy matter, although the parties had developed marital problems and had retained their own matrimonial lawyers; it was found that, at times, the attorney advanced the interests of one client while compromising the interests of the other).

In the present case, while an argument could be made for the imposition of either a reprimand or censure, we find that, because four client matters were involved, because respondent made misrepresentations not only to a client but also to a tribunal, because he tried to blame others for his inaction, because his ethics history shows that he did not learn from past mistakes (prior admonition for failing to provide client a writing setting forth the basis or rate of the fee), and because his testimony was often less than believable, a three-month suspension for the totality of his conduct in DRB 08-362 and DRB 08-363 is appropriate. We note also that respondent is not a novice attorney. Over the years, he has tried hundreds of cases, handled approximately thirty to thirty-five appeals, and close

to seventy-five post-conviction relief applications. Therefore, he should have known better.

We further require that, prior to reinstatement, respondent take ICLE courses in law office management and provide proof of fitness to practice law by an OAE-approved mental health professional. Upon reinstatement, he should be required to practice under the supervision of an OAE-approved proctor for a two-year period.

Member Clark voted to impose a censure, with the same conditions outlined above. Members Boylan and Lolla did not participate.

Finally, we determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Richard M. Roberts
Docket Nos. DRB 08-362 and DRB 08-363

Argued: February 19, 2009

Decided: April 7, 2009

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan						X
Clark			X			
Doremus		X				
Lolla						X
Stanton		X				
Wissinger		X				
Total:		6	1			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel