SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-389

IN THE MATTER OF :
STEVEN I. KERN, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: December 16, 1992

Decided: August 3, 1993

William E. Norris appeared on behalf of the District X Ethics Committee.

Stephen S. Weinstein appeared on behalf of respondent.

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

This matter was originally before the Board on an appeal from a recommendation for dismissal filed by the Special Master, Douglas S. Brierley, Esq., on behalf of the District X Ethics Committee. The formal complaint charged respondent with lack of diligence (RPC 1.3), gross neglect (RPC 1.1(a)), failure to promptly deliver to a client property that the client is entitled to receive (RPC 1.15(b)), improper withdrawal from representation (RPC 1.16(c)), failure to take steps to reasonably protect a client's interest following termination of representation and failure to surrender to the client papers and property to which the client is entitled (RPC 1.16(d)), knowing disobedience of an obligation under the rules of a tribunal (RPC 3.4(c)), violation of

the Rules of Professional Conduct (RPC 8.4(a)) and conduct prejudicial to the administration of justice (RPC 8.4(d)).

Respondent filed an answer denying the allegations of the complaint. In his answer, respondent maintained that he properly withdrew from representation of his client and, in fact, that he was ethically obligated to do so. He further maintained that he committed no ethical infraction by retaining his client's file and by asserting a common law retaining lien against it until his bill for legal services and disbursements was satisfied.

The Special Master heard this matter over a period of four non-consecutive days: two days for pretrial arguments and motions and two days for testimony. The grievant, Dr. Nora Brayshaw, did not attend any of those hearings. Instead, her husband, David D. Brayshaw, Esq., made an application to be designated a "grievant" and to be allowed to testify as a witness. The Special Master granted both motions.

The facts, as found by the Special Master, are as follows:

> Respondent Steven I. Kern, Esq., was admitted to the bar of the State of New Jersey in 1975. At the time of the events complained of herein, he was a principal in Kern and Augustine, P.A., with law offices in Morristown, New Jersey. At the present time, respondent is a principal in Kern, Augustine, Conroy & Isele, with offices located in Bridgewater, New Jersey. Respondent concentrates his practice in representing physicians, nurses and other healthcare professionals, primarily before professional boards. Oct.15T87-15 to 89-20; R-20. The legal and medical communities recognize respondent as an aggressive litigator with a reputation for candor and honesty. Oct.15T130-11 to 131-16; Oct.15T217-16 to 218-22; Oct.15T227-5 to 231-25.
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> In September 1987, Nora Brayshaw, M.D., retained respondent to represent her in disciplinary proceedings brought by the Board of Medical Examiners that were to be

heard by the OAL. The state Attorney General started the disciplinary hearings before the Board of Medical Examiners and claimed that Dr. Brayshaw had, inter alia, negligently deviated from accepted medical practice in treating twenty-six patients. C-9, at 1.

The parties entered into a retainer agreement. See C-1. The client paid a retainer of $25,000.00 to respondent at the outset of representation. The retainer agreement contained a clause allowing respondent's firm the option to cease representation 'if [the] financial obligations [outlined in the retainer agreement] are not met.' The parties originally executed the retainer agreement on September 18, 1987. The parties modified the original retainer agreement in a letter by respondent to the Brayshaws on November 17, 1987. See C-2. Billings during the period of September 1987 through March 1988 exceeded $121,000.00. See C-6.

Until and including early 1988, Dr. Brayshaw praised respondent's efforts on her behalf in the OAL proceedings. See R-27; R-29. See also remarks on praise offered in rebuttal by Mr. Brayshaw, at Dec.16T187-21 to 198-8.

In early 1988, disagreements arose over satisfaction of respondent's bills and the supposed absence of continued cooperation by the Brayshaws in defending the administrative charges levelled against Dr. Brayshaw. Oct.15T90-1 to -6. In April 1988, respondent indicated he would decline further representation absent payment of the fee charged. See C-7.

After the disciplinary hearing had proceeded some twenty-six days before the OAL, (see C-8, at 92-2 to 8), respondent moved to be relieved as counsel on the ground that the client failed to pay the fees and costs then due (approximately $85,000). See C-6; C-7; C-9, at 3; C-50. The motion was also predicated, in part, on respondent's allegations of threats, coercion, and lack of cooperation by the client. C-8, at 27-11 et seq. & 102-17 to 108-23; C-9, at 4 to 5. See R-1. According to the respondent, the Brayshaws threatened, inter alia, to file ethics complaints against him. C-8, at 47-24 to 48-7. Respondent did not cite any particular RPC either in his motion papers or at the OAL hearing on the issue. See C-50. At the hearing on the application to withdraw, respondent Kern claimed the OAL lacked jurisdiction to order him to serve as counsel without adequate assurance of compensation. C-8, at 108-24 to 109-14.

While the Brayshaws denied the allegations of uncooperativeness, Mr. Brayshaw testified that he had indeed directed threats at respondent should Mr. Kern in fact fail to continue his representation of Dr. Brayshaw. Dec.16T81-25 to 82-2. Mr. Brayshaw acknowledged that threats from a client would render extremely difficult the attorney's continued legal representation of the client. Dec.16T81-20 to -24.

After an extensive hearing during which respondent gave testimony, Kenneth Springer, A.L.J., denied respondent's motion to be relieved as counsel. See C-3; C-8, at 143-20 to 160-25. Judge Springer characterized the action as essentially 'a fee dispute between an attorney and his client,' which involved 'various attempts made or offers or counteroffers regarding how this dispute could be resolved.' Id. at 145-18 to 146-4. The Administrative Law Judge expressed concern about the apparent lack of cooperation by Dr. Brayshaw with respondent, although Judge Springer noted that she could be reached through her husband at his law firm. The client had also expressed a willingness, Judge Springer found, to make herself available for key moments in the medical board disciplinary case. Id. at 148-7 to 149-9.

Given (a) the 'expertise' respondent possessed in handling such a complex administrative law proceeding that in all likelihood would continue for another twenty-five to fifty days, (b) the voluminous record already produced in the hotly-contested proceeding, (c) the ability of respondent to proceed in Dr. Brayshaw's absence, and (d) the inherent authority of an administrative tribunal to control the appearance of attorneys before the OAL, Judge Springer refused to permit respondent to withdraw. Id. at 146-18 to 148-6 & 149-10 to 154-24. The delay and expense in having someone else become familiar with the matter would be too great, the Administrative Law Judge added. Id. at 159-2 to -16.

While expressing the view that respondent may be entitled to receive payments pursuant to the terms of the retainer agreement or through the appropriate fee arbitration procedure, Judge Springer's primary concern rested in 'the integrity of the administrative process and with the clear prejudice that would result to Dr. Brayshaw if Mr. Kern were permitted to step aside at this late stage of the proceedings.' Id. at 154-25 to 155-22. Judge Springer stated, in pertinent part:

> Once an attorney has undertaken obligations and duties to a client, [those

> obligations and duties] do not evaporate in terms of the Court merely because the case becomes more complicated or the work more arduous or the retainer not as profitable as first contemplated or imagined. Nor . . . does an attorney have the right to be relieved as counsel in a case merely because the client may be difficult to deal with or unpleasant or [does] not immediately [follow] any suggestion that the attorney makes to the client.
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> [Id. at 156-5 to -15.]

Judge Springer entered on May 20, 1988, an order memorializing the denial of respondent's application to withdraw. See C-3.

By May 27, 1988, respondent moved before the Acting Director of the OAL for interlocutory review of the May 20 order. See C-50. Respondent briefly referred to RPC 1.16(b) in his appeal. See May 27, 1988 memo, at 9, contained in C-50. On review, the Acting Director affirmed Judge Springer's ruling and held that respondent's firm 'may not withdraw from this case without material adverse effects on [sic] the interests of the respondent [Brayshaw].' C-11, at 11.

Thereafter, Mr. Kern filed motions for leave to appeal with the Appellate Division and the Supreme Court; both motions were denied. See C-9; C-27; C-32; C-49; C-51.

In the meantime, respondent also pursued two additional avenues of relief. First, respondent's firm filed suit in the Superior Court, Law Division, against the client and her husband. Respondent sought, among other relief, a declaration from the court that the OAL lacked jurisdiction to order him to continue representing Dr. Brayshaw in the administrative proceedings. See C-15, at Verified Complaint Fifth Count. As a further part of the relief requested in that Law Division action, respondent sought to restrain the client and her husband from removing any assets out of the state and country. See C-15, at Verified Complaint First Count, at ¶¶7 to 17, & Order to Show Cause.

At the hearing before the court, the Law Division determined it lacked jurisdiction to review the decision of an administrative law judge. See C-18, at 8-12 to 16-25.

As his second avenue of relief, respondent renewed his motion to withdraw in August 1988 before the OAL.

See C-19; C-20; C-23. Dr. Brayshaw submitted a certification in opposition to the renewed motion. See C-21. Respondent grounded this renewed motion on several events that occurred subsequent to the original motion, including the client's supposed filing of a complaint with the District X Fee Arbitration Committee that detailed allegations of serious unethical conduct by respondent. See C-20 & July 11, 1988 attachment to C-21.[1] Respondent made no mention of RPC 1.16 in supporting his renewed application for relief.

In renewing his motion to be relieved as counsel, respondent further renewed an argument challenging the subject matter jurisdiction of the OAL to decide the issue of his continued legal representation of Dr. Brayshaw:

> It should be clear, however, that it remains the movant's position that the Office of Administrative Law is without jurisdiction to compel the law firm to continue to represent the respondent and without any enforcement power to require such representation. As a result the movant reluctantly must advise the Court that it may not represent the respondent [Brayshaw] absent an order by a court of competent jurisdiction directing it to do so. Kern & Augustine thus hereby places the Office of Administrative Law on notice that any attempt to compel continued representation of respondent may require the Offfice of Administrative Law or [ ] respondent [Brayshaw] to seek an order from such court of competent jurisdiction directing it to do so. Of course, an order of a court of competent jurisdiction would be honored.
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> [C-20, at 3 (last paragraph).]

Judge Springer treated this motion as one for reconsideration. On September 2, 1988, Judge Springer denied the renewed motion because the original motion to be relieved as counsel was, as of that moment, still pending before the Appellate Division. See C-24. Judge Springer instructed respondent that, unless the Appellate Division directed otherwise, he should be prepared to

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[1] The fee arbitration complaint was never filed either because the form of the complaint was inappropriate or for some other unexplained reason.

defend his client's interest upon continuation of the administrative hearings. Id. at 2.

Following the same path he previously blazed, respondent moved in September 1988 for an interlocutory appeal of Judge Springer's latest determination. In his appeal, respondent again failed to cite RPC 1.16. The Acting Director and Chief Administrative Law Judge who reviewed the interlocutory appeal affirmed the decision of Judge Springer on September 23, 1988. See C-25 & C-26.

On or about October 1, 1988, a friend of Dr. Brayshaw, Clifford H. Sheehan, Esq., informed respondent that the Brayshaws no longer wanted respondent Kern to represent them. Oct.15T159-22 to 160-3; Oct.15T162-5 to 165-19. Respondent thereafter advised the OAL of the fact. See C-34.

By letter dated October 4, 1988, respondent corresponded with Administrative Law Judge Weiss, the administrative law judge who not only had conducted twenty-six days of hearings, but would continue to hear the evidence regarding the disciplinary charges filed against Dr. Brayshaw. See C-28. Until the October 4 communication (or one a few days earlier) from respondent, Judge Weiss had been shielded from the charges respondent Kern had made against the Brayshaws; Judge Springer had announced that respondent's charges against the Brayshaws would be sealed so Judge Weiss would remain insulated 'from any possible charge that his objectivity could be affected . . . .' C-8, at 12-16 to -24.

In the October 4 letter to Judge Weiss, respondent reported that his firm must withdraw from representing Dr. Brayshaw because the Brayshaws had practiced or issued 'many . . . deceptions, falsifications, and mistatements [sic] . . . .' Although the Brayshaws' alleged deceptions and other misconduct were unspecified in the October 4 letter, the alleged deceptions and misstatements appeared to rest on events described by respondent in the earlier application to withdraw that he had renewed before Judge Springer in August 1988 and in the subsequent motion to the OAL Acting Director for interlocutory review thereof. Compare C-20 & C-25 with C-28. Mr. Kern included among the allegations an occasion wherein Mr. Brayshaw told respondent that a defense in the administrative proceeding was false and he effectively told respondent to perpetuate the falsehood as the hearings progressed. Oct.15T95-15 to 97-11. See allegation of fraud on the court in C-4. Mr. Brayshaw

denied such a conversation ever occurred. Dec.16T41-14 to 43-4. In any event, respondent advised Judge Weiss that, under RPC 1.16(a), he could no longer appear on Dr. Brayshaw's behalf. See C-28.

RPC 1.16(a) provides that 'a lawyer . . . shall withdraw from the representation of a client if . . . the representation will result in the violation of [RPCs] or other law.' In the October 4 letter, respondent invoked RPC 1.16(a) and maintained his firm would not become an accessory to any attempt to deceive.

Judge Weiss responded. His Honor declared that the hearings would proceed, with the expectation that respondent would abide by the prior orders not allowing him to withdraw as the attorney for Dr. Brayshaw in the matter. See C-30.

To Judge Weiss's decision, respondent replied that, under his interpretation of RPC 1.16(a), he had no alternative but to decline further representation of the client; he refused to appear when the hearings resumed. See C-31. Respondent reported to Judge Weiss that, in conversations with Mr. Sheehan who was assisting Dr. Brayshaw, 'it is [Mr. Sheehan's] opinion and that of Dr. Brayshaw that it would not be in anyone's interest for me to continue to represent Dr. Brayshaw and <u>that they do not wish me to continue to represent her</u>, but merely wish to have the files provided to subsequent counsel. I am more than willing to do so, <u>consistent with the protection afforded me pursuant to Supreme Court decisions</u>.' <u>Id</u>. [emphasis added]. See respondent's comments on turnover of files, in C-8 at 101-10 to 102-9.

A flurry of communications ensued between Judge Weiss and respondent after the Supreme Court decided in October 1988 not to review the decision denying respondent's original motion to withdraw. These communications reiterated respondent's claimed ethical duty <u>not</u> to represent the client in the soon-to-be-resumed administrative hearings. See C-33, C-34, & C-35. At one juncture, Judge Weiss observed, ' . . . that at no time was a motion made by [respondent] to OAL for permission to withdraw on the basis of [RPC 1.16(a)]. Rather, you determined unilaterally not to appear on October 13, 1988.' C-35. See C-37. As far as the OAL was concerned, the observation of Judge Weiss about respondent's lack of specificity was correct -- respondent had cited RPC 1.16(a) as an argument only in his brief supporting a motion for leave to appeal to the Supreme Court, but not in the original application before the OAL. See C-39; C-40.

At this time, and before as well, the Brayshaws discussed settlement of the underlying administrative disciplinary proceedings; a settlement would moot the withdrawal-of-counsel issue. See Oct.15T94-25 to 95-15; Dec.16T11-13 to 12-3. Mr. Sheehan, the attorney-friend of Dr. Brayshaw, tried to negotiate a settlement with the State of New Jersey in the disciplinary case; he was ultimately unsuccessful.

Perhaps sensing that the State of New Jersey and Dr. Brayshaw would be unable to resolve their differences and thus cause the administrative hearing to proceed, Mr. Sheehan also attempted to obtain the files respondent Kern kept in the OAL case. Respondent refused to waive his retaining lien and surrender the file until so commanded in an 'appropriate' Superior Court action. See C-36. The Brayshaws became increasingly concerned about the need in the administrative hearings for patient charts still in respondent's possession. See C-41. Respondent did not budge in his view that, until the outstanding bills were paid or adequately security [sic] posted, no files would be delivered. See C-42.

Respondent did, however, inform the Brayshaws and Mr. Sheehan that they could inspect or copy any portion of his file they wished. The evidence demonstrates the Brayshaws were given access to any documents that they specifically requested. See, e.g., R-3; R-4; C-12. See also Oct.15T109-21 to 114-20; Oct.15T198-13 to 200-8; Oct.15T210-24 to 212-18 to 32-2.

Needless to say, the medical disciplinary hearings against Dr. Brayshaw resumed in October 1988 without the participation of respondent. Dr. Brayshaw's husband represented her for a short time; thereafter, she appeared pro se. See Dec.16T16-2 to 23; C-44 at 3. After a total of fifty-six days of testimony, the hearings ended.

In a decision issued on February 20, 1990, the New Jersey State Board of Medical Examiners suspended Dr. Brayshaw's license to practice medicine for five years, effective September 23, 1987. See C-44. Two and one-half years of that period were to be served as an active suspension, and the balance was to be stayed, provided Dr. Brayshaw complied with certain restraints and other limitations imposed by the Board. Id. at 57. Dr. Brayshaw appealed the decision; in a decision on January 18, 1992, the Appellate Division affirmed. See Respondent's letter Brief of February 20, 1992, at Exhibit A.

> One other piece of civil litigation should be mentioned. In December 1988, respondent again sued the Brayshaws in Superior Court for payment of his outstanding bills; the Brayshaws counterclaimed with allegations basically tracking those contained in the current ethics grievance under review. See C-45; C-47; C-48. During discovery and despite respondent's vigorous opposition in the Superior Court action, the court required respondent to produce for inspection and copying, inter alia, those documents composing the Brayshaw's file developed during the first twenty-six days of administrative disciplinary hearings before the medical board. See C-46. This civil litigation apparently remains pending.
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> [Decision of Special Master at 3-16.]
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> * * *

The Special Master determined that, despite respondent's assertions to the contrary, RPC 1.16(a) is not "self-executing." Rather, that subsection merely defines the circumstances under which an attorney must take affirmative measures to withdraw from representation. The Special Master further observed that subsection (a) is explicitly qualified by specific reference to subsection (c), which requires an attorney to continue representation, notwithstanding good cause for termination, when required to do so by rule or when ordered to do so by a tribunal. He noted that R.1:11-2 allows an attorney to withdraw from representation, after the preliminary stages of litigation, only by leave of court.

Similarly, the Special Master found erroneous respondent's assertion that the OAL was not a "court", thus lacking the authority to compel him to continue representation.

Specifically, citing In re Mezzacca, 67 N.J. 387, 389 (1975), the Special Master noted that subsection (c) uses the word "tribunal" and that the Court has already considered that term to

encompass courts and administrative agencies alike, in a lawyer disciplinary context. Thus, he observed, "just as the OAL has authority to determine qualifications of attorneys that appear before it, In re Tenure Hearing of Onorevole, 103 N.J. 548, 554-55 (1986), so is it that a 'tribunal' can control the withdrawal of attorneys appearing before it." See Decision of Special Master at 21-22. That notwithstanding, the Special Master concluded that respondent's conduct in ultimately withdrawing from representation was not a deliberate violation of RPC 1.16(a) but, instead, the result of respondent's misinterpretation of that rule. Similarly, the Special Master viewed respondent's refusal to continue representation as a good faith attempt to test the validity of the OAL's ruling. In making that determination, the Special Master noted that RPC 3.4(c) is substantially similar to former DR 7-106(a), which permitted an attorney to make a good faith attempt to test the validity of a tribunal's ruling in the course of a proceeding.

The Special Master further found no clear and convincing evidence that respondent abandoned his client or her interests during the period that he continued to challenge the OAL's order. Specifically, he noted that respondent arranged to meet with his client to continue trial preparation -- should withdrawal ultimately prove to be impossible -- expressed a willingness to continue to present motions and other written materials to the OAL in her behalf, if appropriate; communicated with Judge Weiss and argued his client's entitlement to certain documents and, finally,

missed no hearing appearances. The Special Master, therefore, recommended the dismissal of the charged violations of RPC 1.1(a), 1.3 and 8.4(d).

Finally, the Special Master found that the evidence presented did not clearly and convincingly demonstrate that respondent wrongfully retained property or papers to which his client was entitled or that he unduly restricted her access to them. While he recognized both respondent's right to assert a retaining lien over his client's files until the unpaid balance of his bill was satisfied, as well as his obligation to assert that lien equitably and in a manner that would not severely prejudice his client's ability to defend her interests, the Special Master specifically found that respondent properly balanced these relative interests and made his file available to his client for review and inspection at his office. When copies of specific documents were requested, the Special Master noted, respondent copied the documents and provided them to his client upon payment of a copying charge. The Special Master, therefore, recommended that the charged violations of RPC 1.15(b) and RPC 1.16(d) also be dismissed.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board finds that the factual recitation contained in the Report of the Special Master is accurate. The Board, however, concludes that the evidence clearly

and convincingly establishes that respondent's conduct was unethical.

Regardless of the grounds advanced by respondent for his proposed withdrawal, it is clear that, once the OAL issued an order requiring respondent to continue his representation, he had an absolute obligation to continue to do so, absent a contrary order from a higher court or tribunal. As noted by the Special Master, both RPC 1.16(a) and RPC 1.16(b) are not self-executing. Rather, both of those subsections are explicitly qualified by subsection (c). Specifically, subsection (c) requires an attorney to continue representation, despite good cause for termination, when required to do so by court rule or when ordered to do so by a tribunal. R. 1:11-2 allows an attorney who wishes to withdraw from representation to do so only by leave of court, on written notice to all parties, if he seeks to do so after the pretrial conference, or the filing of a trial date in a civil action. Respondent was, therefore, clearly obligated to seek and obtain "court" leave in order to properly terminate his representation. The OAL was certainly the only proper "court" from which to seek such leave to withdraw. The matter was being tried in the OAL. Twenty-six days of hearing had already taken place when respondent sought to withdraw. The OAL clearly had an interest, at that point, in ensuring the orderly administration of its proceedings. To suggest that it lacked the authority to require respondent to continue his representation because it is not a "court," in the traditional sense of the word, defies all logic and reason. As noted by the

Special Master, RPC 1.16(c) is not so limited. Rather, that subsection specifically makes reference to a tribunal, a clearly more expansive term than "court." See also In re Mezzacca, 67 N.J. 387, 389-390 (1975) and In re Tenure Hearing of Onorevole, 103 N.J. 548, 554-55 (1986).

Respondent's profound and genuine disagreement with the OAL's decision ordering him to continue representation of Dr. Brayshaw did not license him to unilaterally terminate that representation. Nor did his belief that he was ethically prohibited from continuing that representation. While the Board might agree with the Special Master's observation that the relationship between respondent and the Brayshaws had so deteriorated as to render impossible effective representation, at least from a subjective standpoint, the Board cannot second-guess the wisdom of the OAL's decision for purposes of determining the propriety of respondent's conduct. To do so would subject every court proceeding to the individual whim of counsel and would wreak havoc on the orderly administration of justice.

While respondent certainly had the right to tenaciously challenge the OAL's ruling, as he did, that right, of necessity, is qualified by the boundary of the law and of the rules of Court. Respondent crossed that boundary. His outright and deliberate disregard for the OAL's determination did not amount to a good faith challenge of that tribunal's ruling, as suggested by the Special Master. Good faith took leave when respondent persisted in his refusal to continue in his representation of Dr. Brayshaw after

he exhausted all valid avenues of review. Instead, respondent's conduct amounted to no less than an outright flaunt of the proper exercise of court authority. If respondent chose the medium of self-help, by disregarding the OAL's ruling in order to challenge its propriety, then he did so at his own risk and must stand ready to accept the consequences of his decision. In re Felmeister, 95 N.J. 431, 444-6, 448 (1984). Respondent's conduct was in clear violation of RPC 1.16(d). Respondent unilaterally terminated representation of his client, in direct violation of a tribunal's order. Like the Special Master, however, the Board is unable to find that respondent's conduct was prejudicial to the administration of justice, in violation of RPC 8.4(d). The record does not clearly and convincingly establish that the proceedings were delayed by respondent's improper termination, instead of by the OAL's own calendar. Similarly, the Board agrees with the Special Master's dismissal of alleged violations of RPC 1.3, RPC 1.1(a), RPC 1.15(b) and RPC 1.16(d) as not clearly and convincingly supported by the record.

There remains the question, then, of the appropriate quantum of discipline for respondent's misconduct. The purpose of discipline is not the punishment of the offender, but "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the

ethical infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In making its determination, the Board has taken into consideration several migitating factors. First, respondent has an unblemished disciplinary history. Second, the Board recognizes that respondent found himself in difficult circumstances when he was forced to continue to represent individuals who engaged in a pattern of threats against him and who themselves recognized that such threats rendered effective representation extremely difficult. Finally, though misguided, respondent's actions were the result of his sincere belief that it was ethically impermissible for him to continue his representation. The Board is, therefore, of the opinion that the totality of respondent's conduct merits a public reprimand. The Board unanimously so recommends. Two members did not participate.

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

Dated: 5/3/1993 By: Raymond R. Trombadore
Chair
Disciplinary Review Board