SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-103
District Docket No. IIA-03-024E

IN THE MATTER OF	:
THOMAS A. GIAMANCO	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 19, 2005

Decided: August 2, 2005

Ellen K. Bromsen appeared on behalf of the District IIA Ethics Committee.

Catherine M. Elston appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline filed by the District IIA Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.16, presumably

(a)(3) (continued representation of a client after attorney is discharged) and (d) (failure to protect a client's interests upon termination of the representation), and RPC 8.4, presumably (c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent was admitted to the New Jersey bar in 1983. In 1999, following a motion for discipline by consent, he received a reprimand for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with a client), and RPC 8.4(c) (misrepresentation of the status of a matter to a client). In re Giamanco, 161 N.J. 724 (1999).

On August 6, 2002, Paul Kibler, the grievant, retained respondent to represent him in a bankruptcy proceeding. The retainer agreement provided that respondent would file a Chapter 7 bankruptcy petition and appear at the creditors' meeting for a fee of $1,500 plus $285 for costs. According to the retainer agreement, respondent was to begin work upon receipt of $200, payment of which was acknowledged. The retainer agreement set forth a payment plan, requiring payment in full by November 8, 2002. Kibler, however, did not fully pay respondent's fee until April 2, 2003.

By letters dated August 6 and September 13, 2002, respondent asked Kibler to provide a completed information form,

plus copies of credit card statements, financial statements, pay stubs, and tax returns. In an e-mail dated October 22, 2002, Kibler provided a ten-page spreadsheet containing information about his debts. From time to time, Kibler sent updated information to respondent via e-mail.

In a May 14, 2003 e-mail to respondent, Kibler acknowledged that he had not paid respondent in full until April 2, 2003, complained that he had not had any contact from respondent for seven months, and asked when the petition would be filed. On the same day, respondent replied in an e-mail that he had lost contact with Kibler for several months and could not proceed without knowing his whereabouts. Respondent represented that the petition would be completed "shortly." Although Kibler acknowledged that he began traveling frequently to Missouri, where he eventually relocated, he disputed that he had lost contact with respondent, testifying at the hearing that he was "one e-mail away at all times."

On June 11, 2003, Kibler e-mailed the final spreadsheets to respondent's wife, who was also his secretary. Kibler sent a June 16, 2003 e-mail to respondent confirming a telephone conversation in which respondent's wife had informed Kibler that the petition was almost complete, that respondent had been in a

car accident and had recently joined a new firm, and that she also had just started working at a new job. Kibler asked respondent to select a date for them to meet so that he could sign the bankruptcy petition.

Having received no reply to these inquiries, Kibler sent a letter, dated June 30, 2003, to respondent directing him to cease work on the bankruptcy matter and refund $1,785 to him, or, in the event that respondent had completed the bankruptcy petition, to send it to him by July 4, 2003. Kibler added that, if respondent did not comply, he would file a grievance with ethics authorities, file a complaint with the Special Civil Part and the Better Business Bureau, and ask the New Jersey and American Bar Associations and Martindale-Hubble to discontinue respondent's memberships. Respondent denied receiving this letter.

On July 15, 2003, respondent's wife informed Kibler in an e-mail that the bankruptcy petition was prepared and that he could pick it up at the Ridgewood office. On July 17, 2003, Kibler sent an e-mail to respondent's wife acknowledging receipt of the petition. Although he had been instructed to contact respondent's wife to arrange for the return of the document after he had signed it, on July 26, 2003, Kibler sent the signed

petition to respondent's new law firm in Passaic. Kibler introduced an electronic tracking confirmation from the post office indicating that the petition was received at the Passaic law firm, although the receipt was signed by someone other than respondent.

On August 12, 2003, Kibler sent an e-mail to respondent's wife, asking for the docket number for his bankruptcy case. He received no reply until respondent's September 18, 2003 e-mail, indicating that the petition would be filed by Friday, September 19, 2003. However, on September 22, 2003, respondent informed Kibler, by e-mail, that, although he had been unable to file the petition when promised, he would do so that day. Also on September 22, 2003, Kibler sent an e-mail to respondent, asking him to add another debt to the petition before filing it, and providing the relevant information about the debt. Respondent replied that he would revise the petition, cautioning that Kibler might be required to sign it again because of the changes. The next day, Kibler inquired about the status of the petition and was again informed that it would be filed within a day or two, unless Kibler's signature was required.

According to Kibler, at this point he was "100 percent worn out" and "100 percent sick and tired of the whole thing." He

testified that, during this period, creditors were contacting him and that "from April when [respondent] was paid in full until October I just couldn't get [respondent] to have a sense of urgency that this was important to me."

Kibler's frustration at respondent's failure to file the bankruptcy petition culminated in the following e-mail sent to respondent on October 7, 2003, bearing the subject line "FINAL DEADLINE":

> Recently, I have contacted the Supreme Court of New Jersey's Office of Attorney Ethics with respect to filing a grievance against you for neglecting your Agreement to Provide Legal Services.
>
> As a result, I am requesting that you file my voluntary bankruptcy petition on or before October 10, 2003. However, if you decide or otherwise are not able to file the said petition on or before October 10, 2003 – kindly forward the retainer in the amount of $1,500 for legal fees, the $285 filing and photocopying fees and my case file to the following address to resolve this issue . . . .
> Otherwise, please be advised that I will not hesitate to file a grievance with the OAE on October 10, 2003.
>
> Sincerely,
> Paul B. Kibler
>
> P.S. I am aware of your September 1999 Reprimand (S.C. Citation # 161-NJ-0724).
>
> [Ex.G-5.]

On October 10, 2003, having received no contact from respondent, Kibler sent him an e-mail with a subject line "CEASE AGREEMENT," instructing him to cease work on his file and stating the he would seek legal remedies to protect his interests.

Also on October 10, 2003, Kibler filed a lawsuit against respondent for the return of his legal fees and costs of $1,785.

Kibler filed an ethics grievance against respondent on October 14, 2003. On that date, respondent informed Kibler, via e-mail that, although he had tried to file the petition electronically, he was not able to do so; that, if Kibler checked with the court the next day, he would find the petition filed; and that, because he was not able to include the new debt in the existing petition, he would add the information in a separate filing. Thus, although respondent indicated that he could not file the petition on September 22, 2003, because he was required to amend it to add the new debt, he filed the petition more than three weeks later, without adding the new information.

On October 15, 2003, respondent informed Kibler, through e-mail, that the petition had been filed the day before and that he could not have filed it sooner because of a change in the

electronic filing requirements and because of Kibler's last minute addition of creditors. Respondent added:

> Much of the time was exhausted due to your stay outside NJ and your lack of communication due to your own personal problems. Short of the 341(a) meeting and amendment of one creditor, there is now little left to do. I have earned my fee, expenses have been used; if you wish a Substitution of attorney can be filed for you to appear Pro Se, but you risk further harm from potential creditor-complainants. The choice is yours, but I will not be falsely accused or abused. Please advise.
>
> [Ex.J-6.]

After respondent was served with the lawsuit that Kibler had filed against him, he sent an October 22, 2003 e-mail to Kibler, as follows:

> If you do not withdraw your lawsuit filed 10/10/03 and received by me today I will countersue, withdraw as your counsel in bankruptcy court and subpoena your father and others as witnesses regarding your personal problems as being the cause for any delay, including your belated addition of another creditor.
>
> Your bankruptcy petition may be affected if it comes up that the debts were caused by fraud. I will have no choice but to inform the bankruptcy court if it is discovered through my countersuit that this is so.
>
> Further, your lawsuit is illegal as it is actually under law a fee arbitration issue. Your lawsuit alleges no filing, but the

> petition has been filed. You will be liable for filing a frivilous [sic] lawsuit based upon lies.
>
> Further, the lawsuit cannot proceed without Bankruptcy Court approval, which is when the Trustee will discover the potential problems regarding your debts.
>
> I will give you to Friday, 10/24 to fax proof the matter is withdrawn and assume this was an ill-informed mistake on your part.
>
> [Ex.J-7.]

According to Kibler, although he believed his lawsuit against respondent was proper, after receiving the above e-mail from respondent, he began to have doubts. He also believed that, despite his understanding that he had discharged respondent as his bankruptcy attorney, respondent would continue to delay the bankruptcy proceedings. As a result, on October 24, 2003, Kibler withdrew his lawsuit against respondent. Kibler was not aware of the fee arbitration process and did not know what respondent meant when he referred to the matter as a fee arbitration issue.

On October 21, 2003, Kibler sent a letter to the bankruptcy judge, requesting that his case be transferred to the Eastern District of Missouri, that respondent be removed as his attorney, and that Kibler be permitted to represent himself.

Kibler did not send a copy of that letter to respondent. On October 25, 2003, respondent sent Kibler the following e-mail:

> This is still a lawsuit DURING a bankruptcy, the substance of which is governed by fee arditration [sic], NOT a lawsuit, you did not provide complete creditor info until 6-12-03, during which time I was out of work due to a serious car accident resulting in a reconstructive knee operation on 6-20-03[.]
>
> You must copy me on any court petitions.
>
> I told you I could not re-do the petition without requiring a new petition signed by you; the most expediant [sic] way was to file as is and file an amendment.
>
> If you wish to handle the Bankruptcy Pro Se I will sign a consent Order which must still be approved by the court[.]
>
> I will still effectuate the amendment as you probably do not know how to do it[.]
>
> A part of any lawsuit in any court is proper notice to your adversary, you should be wise to follow that advice[.]
>
> [Ex.J-7 at 65.]

Kibler testified that respondent continued to represent him against his wishes, despite the fact that he had discharged him on October 10, 2003, had filed a lawsuit against him, and had asked the bankruptcy judge to remove him as his attorney of record. On December 18, 2003, respondent attended the creditors' meeting. At that meeting, the trustee informed respondent that

Kibler had filed an application to transfer the case to Missouri and to remove respondent as attorney of record. On January 8, 2004, the bankruptcy judge denied Kibler's motion to transfer the case to Missouri and dismissed the bankruptcy case.

According to Kibler, after the dismissal of the New Jersey bankruptcy case, he filed a bankruptcy petition in Missouri and concluded the case in three months. He complained that, because his credit report shows two bankruptcy proceedings, one in New Jersey and one in Missouri, his credit standing has been negatively affected and he is required to pay higher interest rates. He also has had difficulty obtaining car loans and other financing.

Kibler summarized his frustration with respondent's inaction:

> [I]f Tom would have just filed the paperwork I would have been happy. Or if he just would have just [sic] communicated with me, that's all this is. All this is is just a desperation of a person that just wants to talk to the guy and know what's up . . . . I didn't make the payment in full until April, I admit that, and I indicated that in the letter, but you know what, from April to October how can he possibly explain why it took me contacting Small Claims Court, why, you know, I had to beg, scream, holler, kick, "I'm going to do this if you don't do this." I'm a client; I'm not his adversary.

> All I wanted him to do was just file it. I didn't want to go through this.
>
> . . . .
>
> I will never let somebody take advantage of me like this man did. I'll never forget the hell I've been put through by this man . . . . I feel like I was exploited and taken advantage of, telling me I'm a drug addict, that I gamble, that I'm a criminal, what point is that? What does that have to do with me giving him money and him filing the paper?
>
> (1T156-4 to 1T157-21.)

For his part, respondent testified that Kibler never sent requested documents concerning his financial circumstances, with the exception of a pay stub, information about one creditor, a questionnaire, and spreadsheets.

Respondent offered various explanations for the absence of communication between Kibler and himself. He claimed that he was unaware of Kibler's whereabouts, after Kibler left New Jersey, until early 2003, when Kibler's father paid a portion of respondent's legal fee. In addition, after respondent joined the Passaic law firm, there were many days when he could not gain access to the internet and to e-mail. Despite these problems, respondent did not instruct Kibler not to contact him by e-mail, because, he asserted, he did not have Kibler's address or

telephone number and could contact him only via e-mail. Furthermore, respondent testified, on June 4, 2003, he sustained injuries in an automobile accident, requiring knee surgery on June 20, 2003. He was prescribed Percocet for pain and underwent a course of physical therapy from July through October 2003.

With respect to the delay in filing the bankruptcy petition, respondent stated that, although he directed Kibler to return the signed document to his Ridgewood office, Kibler mailed it to his new law firm in Passaic. Respondent denied receiving the petition, claiming that he had experienced difficulty getting his mail at the law firm. At the ethics hearing, Paul Caramico, a former office manager at that law firm, confirmed that packages sent by overnight mail often were not directed to the proper party once they were received in the office and that e-mail service was not always accessible at the firm. Respondent left the firm in September 2003.

Respondent further claimed that, on October 1, 2003, the bankruptcy court began accepting bankruptcy petitions by electronic filing and that there was a delay in filing Kibler's petition because respondent was trying to learn the new filing procedures. He conceded, however, that he did not file Kibler's

petition electronically, but delivered it to the courthouse on October 14, 2003, when he was in Newark for unrelated reasons.

According to respondent, the bankruptcy petition that he eventually filed was signed by Kibler on September 9, 2003. Although respondent planned to file the petition on September 22, 2003, Kibler notified him that he would be providing information about a new creditor and directed him not to file the petition.

Respondent claimed that he filed the bankruptcy petition on Tuesday, October 14, 2003, before he read the e-mails from Kibler dated October 7 and October 10, 2003, respectively. In the first e-mail, Kibler threatened to file an ethics grievance on October 10, 2003, if the petition were not filed or his fees returned by that date; in the second e-mail, Kibler directed respondent to cease work on the file. Respondent asserted that Kibler sent the October 10, 2003 e-mail on a Friday at 8:09 P.M. eastern daylight time, that the following Monday was a legal holiday, and that he filed the petition on Tuesday, October 14, 2003. According to respondent, although he accessed his e-mail account to send an e-mail to Kibler on October 14, 2003, he did not read any of his e-mails at that time and he did not do so until after he filed the bankruptcy petition.

Respondent denied any knowledge, until the creditors' meeting, that Kibler wanted to remove him as his attorney in the bankruptcy proceeding. At that time, the trustee informed him that Kibler had filed a motion to transfer the case to Missouri and to remove him as counsel. Respondent took no action because he did not oppose those motions.

With respect to the October 22, 2003 e-mail that respondent sent to Kibler after he was served with the small claims court complaint, respondent testified that "when I got the lawsuit in the mail I was shocked and mad and this was my knee-jerk reaction to it." He denied threatening or intimidating Kibler by stating in that e-mail that, if Kibler did not withdraw the lawsuit, he would "countersue" and subpoena witnesses regarding Kibler's personal problems. Respondent believed that the entire controversy doctrine required him to file a counterclaim for any cause of action he might have had against Kibler.

Respondent suspected that some of Kibler's debts listed on his bankruptcy petition were fraudulent. Respondent's wife testified that, at some point, Kibler had asked her to delay filing the bankruptcy petition because he wanted to add his girlfriend's medical bills. Furthermore, in his reply to the grievance, respondent stated that he began to suspect fraud

because (1) Kibler wanted to file the petition in New Jersey when he resided in Missouri; (2) he never provided documents to verify the debts listed on the spreadsheets; (3) he never documented his student loans and respondent suspected that the loans were used for purposes other than education, such as drug purchases; and (4) he "actually told my wife . . . that the medical bills and some of the credit card debt he had listed on his bankruptcy were his girlfriend's debt and that he took care of these expenses because he knew he was going to file bankruptcy."

Respondent asserted that, notwithstanding his suspicions, he filed the petition in New Jersey listing the above debts because he had no evidence of fraud and because he knew that the bankruptcy trustee would inquire about the debts.

Respondent claimed that, at the time he informed Kibler that the lawsuit for a refund of his legal fees was illegal, he believed that a client was required to file a fee arbitration petition to resolve a fee dispute and was precluded from filing a civil suit. He conceded that he misstated the law, that he did not research that issue and that it would be logical to assume that Kibler would rely on his representations of the law. Respondent also believed that, because the bankruptcy trustee assumes control over the bankrupt person's assets, Kibler was

required to obtain the trustee's approval before filing suit. He acknowledged that the bankruptcy code did not specifically provide that Kibler needed the trustee's approval and that his position was based on his interpretation of the law.

Respondent denied that he had engaged in a conflict of interest by continuing to represent Kibler in the bankruptcy after Kibler had sued him to recover the legal fees and costs paid for representation in the bankruptcy matter. Respondent claimed that, because he was the attorney of record, he was required to protect Kibler's interests; that the lawsuit was based on the erroneous premise that respondent had not filed the bankruptcy petition; and that, if Kibler had withdrawn the lawsuit, there would have been no conflict. He maintained that, had Kibler not withdrawn the lawsuit, he would have proceeded to withdraw as counsel from the bankruptcy matter.

The DEC found that respondent violated RPC 8.4(c) by sending the October 22, 2003 e-mail misrepresenting the law. The DEC concluded that the e-mail's purpose was to threaten and intimidate Kibler into withdrawing the lawsuit, noting that, even if the e-mail could be characterized as a "knee-jerk reaction," the subsequent e-mail, sent three days later, could not.

The DEC dismissed the charges that respondent violated RPC 1.16(a)(3) and (d), finding no clear and convincing evidence that respondent was aware, before filing the petition, that Kibler had discharged him. In addition, the DEC found that, even after respondent was aware of the "cease agreement" e-mail and of Kibler's lawsuit against him, Kibler should have given respondent a "more definitive" statement that he had discharged respondent. The DEC pointed to Kibler's silence, despite his awareness that respondent would be attending the creditors' meeting in his behalf.

Although the majority of the DEC hearing panel recommended a reprimand, the public member recommended a suspension, without specifying the length. The DEC described respondent's attitude as "cocky," commenting that "[h]e was arrogant and exhibited no remorse for any possible wrongdoing or lapses in judgment. Rather than concede that his behavior was inappropriate, Respondent provided justifications for his actions and behaved in an adversarial manner." The DEC commented that respondent's testimony -- that he had accessed his e-mail account on October 14, 2003 to inform Kibler that the petition had been filed but did not read any of the e-mails in his mailbox including the

"cease agreement" e-mail -- was "suspect in light of Respondent's actions and conduct."

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

After agreeing to file a bankruptcy petition for Kibler and to begin work upon receipt of the initial $200 fee installment, respondent neglected the matter. In the fee agreement, dated August 6, 2002, respondent acknowledged that Kibler had paid $200 toward his fee. Except for sending two routine letters asking his client for information about his debts, respondent appeared to have performed little, if any, services until almost one year later, when he sent the petition to Kibler for his review.

We find little merit in respondent's excuses for this substantial delay. Although Kibler must bear some of the responsibility, respondent greatly contributed to the delay. Respondent maintained that, for a period of time, he was not aware of Kibler's location. However, he had communicated with Kibler primarily by e-mail and could have continued to do so. Although respondent had difficulty accessing his e-mail account after he joined the law firm in Passaic, he never instructed

Kibler to communicate with him by another method. Respondent's June 4, 2003 car accident and the surgery thereafter understandably prevented him from filing the petition sooner. However, respondent should have notified Kibler to expect a delay for that reason. His failure to do so increased Kibler's frustration with the slow pace of the matter.

Although respondent attributed some of the delay to new procedures instituted by the bankruptcy court for electronic filing, respondent did not file the petition electronically. Furthermore, respondent asserted that he could not file the petition on September 22, 2003, because Kibler had added a new creditor. Yet, respondent did not add the new creditor to the petition that he filed more than three weeks later.

We find that respondent's failure to file the bankruptcy petition until fifteen months after he had been retained, and then only after his client filed a lawsuit against him, constituted a lack of diligence, a violation of RPC 1.3.

Although the complaint did not charge a violation of RPC 1.3, the issue was fully litigated below, with no objection from respondent's counsel. The record developed below contains clear and convincing evidence of a violation of that RPC. We,

therefore, deem the complaint amended to conform to the proofs. R. 4:9-2.

We also find a violation of RPC 1.7(b) (conflict of interest).[1] In this case, respondent represented Kibler in a bankruptcy matter. Dissatisfied with respondent's services, Kibler discharged respondent and filed an ethics grievance and a civil suit against him. Yet, respondent failed to withdraw as counsel of record in the bankruptcy matter.

In our view, respondent's explanations do not justify his continued representation of Kibler. He claimed that the matter resulted from a misunderstanding because, although Kibler alleged in the civil suit that respondent had not filed the bankruptcy petition, he had. Respondent also claimed that, if Kibler had not withdrawn the civil suit, he would have withdrawn from the bankruptcy case. Respondent failed to appreciate the gravity of the circumstances, believing that he and Kibler were involved in a mere attorney-client dispute.

Because Kibler's civil suit was based on respondent's representation in the bankruptcy matter, a conflict of interest arose and respondent should have immediately sought to be

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[1] Effective January 1, 2004, that RPC was redesignated as RPC 1.7(a)(2).

relieved as counsel. Moreover, respondent exacerbated the conflict of interest by threatening Kibler in order to encourage him to withdraw the civil suit. At that point, respondent was counseling Kibler to withdraw the lawsuit against him, while he continued to represent him. Respondent's failure to withdraw as Kibler's attorney violated RPC 1.7(b).

Although the complaint did not charge a violation of RPC 1.7(b), that issue also was fully litigated below, with no objection from respondent's counsel. The record developed below contains clear and convincing evidence of a conflict of interest. We, thus, deem the complaint amended to conform to the proofs. R. 4:9-2.

As noted above, the DEC dismissed the charges that respondent continued to represent Kibler after he was discharged as his attorney and failed to protect his client's interests upon termination of the representation. Because there is no clear and convincing evidence that respondent received the communications from Kibler discharging him or that he failed to protect Kibler's interests after termination of the representation, we dismiss the charges that he violated RPC 1.16(a)(3) and (d).

Respondent's most serious misconduct stemmed from the October 22, 2003 e-mail that he sent to Kibler after respondent

was served with the civil suit. Respondent misrepresented that the lawsuit was illegal because it was precluded by the fee arbitration process. R. 1:20A-6 provides that a client has the option of filing a fee arbitration request as an alternative to litigation; it is not mandatory.

In addition, respondent's statement that Kibler needed approval of the bankruptcy trustee before filing the civil suit was not only a misstatement of the law, but also overlooked the fact that Kibler filed the civil suit before respondent filed the bankruptcy petition. Kibler relied on respondent's expertise as an attorney and believed that his lawsuit was improper. Although respondent claimed that he believed these statements were true, he conceded that he had not researched the issues, even though he submitted a second e-mail three days later repeating the misinformation that Kibler was required to file for fee arbitration. We find that respondent's misrepresentations violated RPC 8.4(c).

Respondent also threatened to "countersue" Kibler and withdraw as his counsel. That conduct was inappropriate, as were respondent's threats to inform the bankruptcy court of Kibler's fraud and to subpoena witnesses to discuss Kibler's personal

problems.[2] Respondent used these threats and intimidation to convince Kibler to withdraw the civil suit, which Kibler did on October 24, 2003, the exact deadline that respondent had imposed. Respondent's threats violated RPC 8.4(d) (conduct prejudicial to the administration of justice). Although the complaint did not charge a violation of RPC 8.4(d), that issue also was fully litigated below, with no objection from respondent's counsel. The record developed below contains clear and convincing evidence that respondent engaged in conduct prejudicial to the administration of justice by threatening and intimidating Kibler to convince him to dismiss the civil suit. We deem the complaint amended to conform to the proofs. R. 4:9-2.

In sum, we find respondent guilty of lack of diligence, conflict of interest, misrepresentation, and conduct prejudicial to the administration of justice, all in violation of RPC 1.3, RPC 1.7(b), RPC 8.4(c), and RPC 8.4(d).

It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the

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[2] If respondent believed that Kibler's conduct was fraudulent, he would have been required to take the appropriate action to avoid aiding his client in perpetrating a fraud.

appropriate discipline in conflict-of-interest situations. In re Berkowitz, 136 N.J. 134, 148 (1994).

Conduct involving lack of diligence and misrepresentation often results in the imposition of a reprimand. See, e.g., In re Barth, 181 N.J. 536 (2004) (reprimand imposed on attorney who accepted a fee to file a bankruptcy petition; failed to file the petition; failed to communicate with the client; and misrepresented to the client that the petition had been filed and that a hearing had been scheduled, resulting in the client's unnecessary return to New Jersey from South Dakota, where she had relocated; mitigating factors included the attorney's unblemished ethics history and his efforts to treat his alcohol dependency); In re Weiworka, 179 N.J. 225 (2004) (reprimand where the attorney entered into a retainer agreement with the client and then failed to take any action on his client's behalf, failed to keep the client informed about the status of the matter or to alert her that the statute of limitations had expired, failed to reply to her numerous requests about the status of the matter, and misled the client that he had filed a complaint); and In re Falcone 169 N.J. 570 (2001) (reprimand imposed on attorney who permitted two personal injury cases to be dismissed for lack of prosecution, failed to seek reinstatement of those complaints,

failed to keep his clients informed about the status of the matters, and misrepresented the status of the cases to his clients).

We consider as an aggravating factor respondent's prior reprimand for gross neglect, lack of diligence, failure to communicate, and misrepresentation of the status of the matter to a client. Another aggravating factor is respondent's threat to reveal personal information about his client if he did not withdraw the civil suit against respondent. In In re Kubiak, 162 N.J. 543 (2000), an attorney received a three-month suspension after he sent a "sympathy" card to the parents of a deceased client in which he threatened to reveal personal and privileged information about the son in an attempt to persuade the parents to withdraw an ethics grievance against him; the attorney was also guilty of failure to safeguard funds and recordkeeping violations.

Based on the foregoing, five members determine that a censure is the appropriate level of discipline for the misconduct displayed by respondent in this case. Chair Mary Maudsley, Vice-Chair William O'Shaughnessy, and Member Robert Holmes, Esq. voted to impose a reprimand. Member Matthew Boylan, Esq. did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas A. Giamanco
Docket No. DRB 05-103

Argued: May 19, 2005

Decided: August 2, 2005

Disposition: Censure

Members	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan					X
Holmes		X			
Lolla	X				
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	5	3			1

By Julianne K. DeCore
Chief Counsel