SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-290
District Docket Nos. VIII-04-018E
and VIII-04-027E

IN THE MATTER OF	:
	:
JOHN A. TUNNEY	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 20, 2005

Decided: November 2, 2005

Heidi Ann Lepp appeared on behalf of the District VIII Ethics committee.

Pamela Brause appeared on behalf of respondent.

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

This matter was before us as a recommendation for discipline filed by the District VIII Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with clients)[1] in two matters and, in one

[1] All references to RPC 1.4 (a) and (b) are to the rules in effect before the 2004 changes.

of them, a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities by not replying to one of the grievances), mistakenly cited as R.P.C. 1:20-4g(4).

Respondent was admitted to the New Jersey bar in 1987. In 2002, he was reprimanded for mishandling four matters, three of which involved the same client. In those three matters, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to turn over the client's files, misrepresentation of the status of the cases to the client and failure to cooperate with disciplinary authorities. In the fourth matter, respondent failed to return the file to the client after the termination of the representation and failed to cooperate with ethics authorities. In addition to reprimanding respondent, the Court required him to show proof of fitness to practice law.

Effective October 29, 2004, respondent was suspended for six months for misconduct in six matters. In four of those matters, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with the clients, and misrepresentation; in one matter, he failed to promptly notify his client's prior counsel of the receipt of settlement funds and misrepresented to prior counsel that, within days, he would submit copies of the settlement documents and counsel's share of

the legal fees; and, in another matter, he failed to return the file to the client, disobeyed court orders requiring the return of the file, and caused his adversary to file three motions for the turnover of the file. Our decision noted that respondent's conduct in those matters occurred approximately within the same time frame as the conduct that led to his prior reprimand. We did not find, thus, that respondent's new ethics transgressions evidenced a failure to learn from prior mistakes, but, rather, were part and parcel of the same overall pattern of misconduct.

In a matter now pending review by the Supreme Court, we determined not to impose additional discipline for respondent's lack of diligence and failure to communicate with the clients in two matters, and gross neglect in one of those matters. We concluded that, if those two matters and the six matters that gave rise to respondent's six-month suspension had been consolidated for hearing, the overall discipline would not have been more severe than six months in any event. Our decision cautioned respondent, however, that, in the future, we might take a different view if additional cases were presented to us. In the Matter of John A. Tunney, Docket No. 04-387 (DRB March 3, 2005) (slip op. at 15).

Finally, at our September 2005 session, we recommended to the Court that respondent be reinstated to the practice of law.

The Court's review of this recommendation and of the Board's decision not to impose additional discipline in respondent's last disciplinary case is awaiting the outcome of this matter.

I. The Franklin Matter – District Docket No. VIII-04-27E

At the time of the ethics hearing below, Richard Franklin, respondent's client, had passed away. Therefore, his widow, Philomena Franklin, testified about respondent's conduct in the case.

In early 1992, Richard Franklin, retained respondent to represent him in a matter involving an accident with a New York City bus. Respondent served a complaint and the defendant served an answer.

On April 8, 1992, respondent wrote a letter to Richard stating that his claim was "progressing well" and asking him to fill out some forms. On May 19, 1992, respondent sent Richard another letter informing him that a trial date had been set for May 26, 1992. A subsequent letter, dated May 27, 1992, notified Richard that a deposition had been scheduled for June 28, 2002,

in New York.[2] Richard attended the "50H hearing."

In mid-1990, respondent communicated a $1,500 settlement offer to Richard, which Richard rejected. According to Philomena, respondent then told Richard, "let me see what I [can] do." Philomena testified that they never heard from respondent again.

Ultimately, the Franklins met with another attorney, who suggested that they write a letter to respondent asking for the return of the file. By letter to respondent dated March 15, 2004, Richard complained that he had not received any correspondence or return calls from him in years and requested the return of his file. Respondent did not reply to the letter and did not turn over the file to Richard.

Respondent acknowledged that he did not communicate with the Franklins after transmitting the settlement offer to them. As to the settlement, respondent testified that he had advised Richard to accept the $1,500 offer, to no avail. According to respondent, "[Richard] had a stop sign and he went and he got hit by a bus and he has a verbal threshold in New York. Everybody does." Furthermore, respondent continued, "[i]t would

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[2] Respondent clarified that the words "trial" and "deposition" in the letters were typographical errors and that the proceeding has actually a "50H hearing," which is similar to a deposition. Respondent also explained that the procedure in New York is to either serve interrogatories or conduct a deposition, but not both.

have been at least a couple of thousand dollars [to proceed with the claim] because [Richard] would have had to bring in the doctor to testimony [sic]. Liability is simple." Although respondent admitted telling Richard that he would try to obtain a higher settlement, he added that "it was more of [Richard's] idea to go for more than my idea."

Even though respondent made a determination that Richard's claim was not worth more than $1,500 because of the verbal threshold and issues of liability, he did not explain to Richard, in writing, that to obtain a more favorable settlement expert testimony was necessary, and he did not make an application to be relieved as counsel, after Richard rejected the settlement offer.

There is some indication in the record that Richard's case is still "alive." Respondent testified that, when the City of New York is the defendant, the case "just sits there" if plaintiff's counsel does not "move the case along."

The Prior Matter – District Docket No. VIII-04-018E

In 1997, Gerald Prior retained respondent to represent him in three matters: one against a company known as Glaro, one

against Radio Shack, and one against the New York City Sanitation Department.

As to the Glaro matter, Gerald testified that, in the beginning of the representation, there was good communication from respondent to him. That stopped suddenly, however. Although Gerald made "call after call after call" to respondent, his attempts to reach respondent were unavailing.

In 2004, respondent had a meeting with Gerald. According to Gerald, respondent told him that

> he had some personal issue that he had to deal with and that unfortunately he basically goofed on the Glaro case and basically it was a wash. There was nothing more that he could do on that at that time on that particular case. He admitted to me he goofed in a very gentlemanly-like manner, he's always been a gentleman, he goofed, you know.
>
> [1T34-3 to 10.][3]

Respondent apologized to Gerald for not communicating with him, an apology that Gerald accepted.

At the DEC hearing, respondent admitted that he had "fumbled" the Glaro matter: "The case against Glaro, I screwed up when I was ill.[4] I didn't respond within discovery. We had

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[3] 1T refers to the transcript of the DEC hearing on February 10, 2005.
2T refers to the transcript of the DEC hearing on February 11, 2005.

[4] Respondent's illness is detailed below.

some difficulty getting the discovery that we needed to supply, but ultimately it was my screw-up." Respondent was referring to his failure to oppose a motion to dismiss filed by the adversary.

As to the Radio Shack case, Gerald testified that respondent had sent him a letter saying that "they had gone as far as they could and there was nothing else he could do." Respondent, in turn, stated that "the case was turned down in a timely manner." He explained that, after the case was investigated, "we felt we couldn't sustain the case and we sent a turn down letter."

With respect to the Sanitation Department matter, Gerald testified that, for the first four years, there was some level of communication between him and respondent. That, however, "came to a screeching halt."

After the filing of the grievance, respondent met with Gerald in late 2004. At that time, respondent told him that the case was "very much alive and progressing slowly but surely." Respondent assured Gerald that there would be communication between them. Gerald testified that respondent appeared very remorseful.

Respondent's partner, Michael Halbfish, is now in charge of the case. Gerald testified that Halbfish is "pretty good [about]

returning my phone calls." According to Halbfish, who also testified at the hearing below, his staff is in the process of setting up a deposition known as an "examination under oath." Halbfish hopes that, thereafter, there will be settlement negotiations.

Respondent confirmed that the case is still viable, albeit "[s]heerly [sic] by the grace of God . . . . Because the defendant is the City of New York it's being handled by the law department and pretty much they don't do anything. It just sits there. If you don't move your case along it will just sit there."

According to respondent, he advised Gerald that he could pursue a claim against him for damages, but Gerald declined to do so. Indeed, Gerald testified that he has no animosity against respondent and still thinks that respondent is a "decent guy."

Respondent testified extensively about his mental illness. In addition, his counsel introduced transcribed portions of testimony by respondent, his wife (Denise Tunney, also an attorney) and two doctors, taken during respondent's prior ethics matters. A summary of this testimony is set forth in our decision in respondent's latest disciplinary case, In the Matter of John A. Tunney, Docket No. 04-387 (DRB March 3, 2005) (slip op. at 7 to 9):

In July 2001, respondent told Denise that ethics charges were pending against him. He did not want her to learn about them from another attorney or from reading a legal newspaper. The ethics charges to which he referred were the charges that ultimately led to the imposition of a reprimand. At that time, respondent had not answered the complaint and expected to be disbarred. According to respondent, he was suicidal. Denise arranged an appointment with respondent's counsel and from there took respondent to a friend, Dr. Thomas Nucatola, who referred respondent to a psychiatrist, Dr. Joseph Vetrano [footnote omitted]. As seen below, respondent was prescribed medication and continues to be treated by Dr. Vetrano.

Respondent described how his depression affected his law practice, testifying that he was not returning telephone calls or even going to his office. According to respondent, the depression began in 1996 as a result of numerous family and personal problems. Respondent continued to see Dr. Vetrano and could not imagine returning to his prior depressed state. He stated that he was devastated by his unethical conduct and that he refused to file a bankruptcy petition, believing that he would be able to earn sufficient fees from his law practice to pay damages to the clients he has harmed [footnote omittred]. Respondent expressed embarrassment and remorse. He stated that he had made changes to his office practices, such as implementing a database system to manage his calendar and to keep track of deadlines.

Dr. Thomas Nucatola, a rheumatologist and respondent's longtime friend, testified that, after Denise brought respondent's condition to his attention, he reflected on respondent's behavior and realized that respondent had begun to change in 1999. Dr.

> Nucatola described these changes, recalling that respondent was not in his office as frequently as he had been and had ceased all leisure activities, such as skiing, which he had previously enjoyed. According to Dr. Nucatola, after respondent began treatment with Dr. Vetrano, respondent returned to his prior lifestyle and appeared to be functioning normally, both in his professional and personal life. Dr. Nucatola expressed doubt that respondent would return to a depressed state because, once depression is diagnosed, treatment is monitored by medical personnel.
> Dr. Vetrano testified that, in July 2001, he diagnosed respondent with a major depression. He stated that a classic symptom of depression is the inability to perform simple tasks, which appear to the depressed person as monumental. According to Dr. Vetrano, respondent took two antidepressants, Celexa and Wellbutrin. He continued to see respondent and believed that respondent's depression was under control.

Respondent recalled the series of tragic events that precipitated his slow, but steady descent into a deep state of depression: (1) in 1994, his father-in-law was diagnosed with lymphoma and given six months to live; the father-in-law had been emotionally dependent on Denise (respondent's wife) since she was a little girl and, at this time, needed constant emotional support, a circumstance that created a stressor in both Denise's and respondent's lives; (2) respondent's father then fell, broke his arm, announced that he was an alcoholic and underwent rehabilitation; (3) in 1996, respondent's father was

hit by a car, required surgery and had to recuperate -- including undergoing physical therapy -- in the living room of respondent and Denise's townhouse; the presence of the rehabilitation equipment in the living room made their living arrangement cramped, a situation that turned Denise into a "powder keg" and created stress for respondent; (4) in January 1996, Denise left respondent's firm, a sad event for respondent; (5) in late 1996 or early 1997, the father-in-law's lymphoma, which had gone into remission, resurfaced; after treatment, it went into remission again; (6) in July 1998, respondent's father suffered a massive stroke; following rehabilitation at a hospital, he went to live with respondent and Denise, who had bought a dilapidated house with the intention of renovating it; the house, however, had to be sold because they could not afford the price of the renovation required to make the house handicap-accessible for the father; (7) after the stroke, the father had a couple of hernias that needed to be surgically repaired; and (8) the father-in-law relapsed again and passed away.

According to respondent, "every time we planned something good, something horrible happened." He did not recognize that he was depressed "until the very end," in 2001, when he was trying to figure out how to kill himself.

Respondent recounted how his depression affected his practice:

> Initially I just thought it was getting more difficult to practice. Things were getting just more time consuming and what I think that was was the beginning of the slip.
>
> I think the easiest way to describe what it's like is it's not one day you're healthy and the next day you feel blue, and then you feel bad, and then you feel hopeless. It's more like you've been swimming and you know where the deep end starts and there's a shallow end, and right on that edge you really can't get a grip so your feet start to tread and then you start to go under and you might be able to swim wonderfully underwater, but you don't. You drown. You go off the deep — you just slide into the deep end and you lose it and at that point it's too late, you're helpless.
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> The feeling you have when you're totally depressed is one of total helplessness, abject desolation. It is — it's the worst feeling you can possibly ever experience. You can't even call for help to anybody. It is — it's terrifying.
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> [2T45-2 to 24.]
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> . . . .
>
> There came a point when I wasn't even going to the office.
>
> . . . .

> I remember driving to the office, sitting in the parking lot and driving home. What was the point?
>
> [2T46-8 to 13.]
>
> . . . .
>
> It would take three to four hours to put a pair of socks on . . . . A lot of the time I'd just be standing there looking. It's hard to describe how it is, but you just can't get anything.
>
> [2T48-15 to 24.]

Respondent stated that, before the onset of his illness, he was a good lawyer, who obtained good results for his clients, had very good communication with them, and was considered their friend. He asserted that, despite his wife's wishes, he refused to file for bankruptcy because he intends to compensate every one of his clients. He has settled several claims and is "as broke as broke can be" right now, but hopes to derive sufficient funds from his law practice to make his clients whole.

As proof of respondent's good character and excellent professional reputation, his counsel introduced into evidence the transcribed testimony of ten attorneys (some of whom had been represented by respondent) and one client, all of whom testified in one of respondent's prior disciplinary case. Their opinion of respondent's personal and professional traits was unanimous: "hardworking," of "impeccable character," "extremely

caring" of his clients, with a "very loyal client base," "very ethical, high-minded, above board," and "one of the most honest people I know."

Respondent's current law partner, Michael Halbfish, testified about respondent's professional competence:

> I had known John Tunney for several years through the Inns of Court. When I first started participating in the Inns of Court he was a mentor to me and all throughout the years that I had known Mr. Tunney I learned from him. He made me a better lawyer and I thought that having him as part of my team I could provide a better service to my clients. I thought that I'd have a good legal mind to bounce ideas off of.
>
> [2T5-24 to 2T6-7.]
>
> Am I willing to stay in a partnership where my reputation that I've worked hard to build, that I take pride in is partially on the line because of him, yes, I'm willing to put my reputation on the line.
>
> . . . .
>
> I also have a strong belief that I can provide a better service to my clients and run a better practice having Mr. Tunney as a partner.
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> [2T11-22 to 2T12-15.]
>
> In particular right now I've got a couple of cases that we've been involved in. Some of the cases that I've taken over for handling Mr. Tunney — I just this week finished up a trial in Morris County where Mr. — it was a

> bench trial that was done over several months. Mr. Tunney did the bulk of that trial and I think he did a brilliant job with it. And I think that it's a trial where a judge has spent about two hours so far stating his findings on the record, he hasn't finished them, I'm going back on Monday, but so far the judge, his findings are basically laying out exactly what Mr. Tunney established through his skilled preparation and examination on the stand of these people. It's a trial that took a lot of investigative work, it took a lot of legal research, it took a lot of preparation, and it stopped a terrible fraud. And this client is going to benefit because Mr. Tunney did a truly outstanding job with this case.
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> [2T13-12 to 2T14-6.]

At the DEC hearing, respondent's counsel asked him about his post-reinstatement to ensure that his clients will be well-served:

> Q. If you ultimately are reinstated do you intend to practice the way you had been practicing that lead [sic] to this. I assume the answer [is] going to be no.
>
> A. Absolutely not.
>
> Q. Can you tell us why and what's going to be done essentially going forward to protect your clients and to ensure that this situation doesn't occur?
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> A. Well, number 1, I will not be chronically depressed. Number 2, we have put measures in place, Mike and I, to prevent that from happening and we

no longer -- I no longer have sole authority on my files by virtue of the fact that we have a partnership so that if something does happen Mike is there to see it, catch it, and back me up on it.

Also as a condition of my reinstatement to practice I'm going to have to practice with a proctor other than Mr. Halbfish so that there will be a second set of eyes looking over my shoulders making sure that the files are moves appropriately.[5]

We also have an Amicus system in the office now which tracks everything. Mike mentioned that, but it wasn't just one program, we had to buy five licenses because we have three secretaries and two attorneys . . . . Everything that goes on in the office needs to be logged into that system now.

. . . .

And one other thing, my wife is looking over my shoulders.

Q. I know Denise.

A. Not into my files, but into my life.

Q. Do you relate the bulk of what has happened to your mental illness?

. . . .

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[5] The Court Order suspending respondent for six months requires him to be supervised, upon reinstatement, by a "practicing attorney approved by the Office of Attorney Ethics, who shall not be respondent's law partner or otherwise associated with respondent in practice."

> To missing the deadlines, not talking to clients, the blowing of statutes, that type of thing.
>
> . . . .
>
> A. Absolutely.
>
> [2T25-6 to 2T26-25.]

Respondent also testified about safeguarding against any relapses:

> There isn't a day I don't take every single pill that I'm supposed to take *exactly when I'm supposed to take it.* I don't want to go back there. The fear of going back there is enough motivation to make me take my medicine every day and I don't plan on ever stopping it.
> My doctor hasn't discussed stopping it, but I'm going to tell him I don't want to stop it if he does. I don't want to take the chance of going back. I won't go back.
>
> [2T51-5 to 15.]

The Court Order suspending respondent for six months required him to submit, with his petition for reinstatement, proof of fitness to practice law. Dr. Vetrano, who has treated respondent from August 2001 to date, attested that he is "free of any symptoms of depression. He has been compliant with his medication. At this time I see no psychiatric reason to prevent Mr. Tunney from returning to the practice of law."

At the conclusion of the ethics hearing, the DEC found that respondent exhibited gross neglect, lack of diligence and failure to communicate with clients in both matters. Although the DEC also found that respondent failed to cooperate with authorities, its report is silent on the factual basis for this finding. Without elaboration, the DEC recommended a one-year suspension.

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

In the Franklin case, respondent did not attempt to obtain a higher recovery for his client, alleging that issues pertaining to liability, verbal threshold, and costly expert opinion made it unlikely that a better settlement could be reached. Nevertheless, respondent should have explained these circumstances to his client, in detail, to allow the client to make an informed decision about the next course of action. Respondent's conduct in this context violated RPC 1.4(b).[6] Furthermore, at least after respondent communicated the $1,500 settlement offer to his client, respondent did not reply to his

[6] Although the complaint did not charge respondent with a violation of RPC 1.4(b), the record developed below contains clear and convincing evidence of a violation of that rule. We, therefore, deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

client's requests for information about the matter, a violation of RPC 1.4(a).

As to the DEC's finding that respondent violated RPC 1.1(a) and RPC 1.3, there is no evidence that respondent neglected the pursuit of the case before the defendant made a settlement offer. It is his conduct thereafter that was improper. As noted above, respondent had an obligation to apprise his client of the problems that respondent perceived as major obstacles in obtaining a better recovery from the case. His failure to do so breached RPC 1.4(b). It id not, however, constitute gross neglect, because, in respondent's view, to engage in further settlement negotiations would not produce a more favorable result. Moreover, respondent testified that Franklin's case is still "alive." At most, respondent's conduct amounted to lack of diligence and then only because he led Franklin to believe that he would at least attempt to obtain a better recovery.

In at least two of the Gerald Prior cases, respondent's conduct was unethical as well. In the Glaro matter, respondent admitted that he "dropped the ball." His failure to prosecute the case constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3. In addition, he did not comply with his client's numerous requests for information about the case, a violation of RPC 1.4(a).

His conduct is not without mitigation, however. He confessed his impropriety to Gerald, expressed his remorse and apologized for his conduct, albeit after the filing of the grievance. Gerald testified, however, that he accepted respondent's apology, still thinks highly of him, and elected to continue to be represented by him. Furthermore, respondent advised Gerald that he could file a claim for legal malpractice, but Gerald declined. Finally, respondent vowed to compensate his clients for any financial harm inflicted on them.

On the other hand, there is no clear and convincing evidence in the record that respondent mismanaged the Radio Shack case. Respondent testified that, after an investigation, it was determined that the claim could not be sustained and that the case was "turned down in a timely manner." Gerald testified that respondent so informed him by letter. Therefore, the DEC findings that respondent was guilty of gross neglect, lack of diligence and failure to communicate with his client are unsupported by the evidence.

We find, however, respondent's conduct in the Sanitation Department matter was unethical. For years he neglected the handling of the matter and, after the initial four years of being retained, did not reply to the client's inquiries about its status. His conduct in this regard violated RPC 1.3, RPC

1.1(a) and RPC 1.4(a). Fortuitously, the case is still pending. Respondent testified that, in this sort of matters, even when the lawyer for the plaintiff does not diligently prosecute it, it just "sits there," instead of being dismissed. Indeed, Halbfish testified that he is now in charge of the case and that it is progressing normally.

We find, thus, that respondent violated RPC 1.4(b) in the Franklin matter and RPC 1.3, RPC 1.1(a) and RPC 1.4(a) in two of the Prior matters (Glaro and Sanitation Department). As seen below, we also find that respondent violated RPC 1.16(a)(2) in both matters.

Compelling circumstances mitigate respondent's conduct. They account for, although not excuse, his inaction. They serve to explain that his passivity was caused by a crippling mental illness, rather than indolence or indifference to the clients' well-being. The assurance that respondent's problems are now under control should benefit both the clients that he will serve in the future and the bar. By many accounts, respondent is a well-respected lawyer, who brings considerable contribution to the legal profession.

On the other hand, once respondent recognized that his illness was preventing him from tending to his client matters, he should have stepped aside. RPC 1.16(a)(2) imposes an

obligation to withdraw from the representation if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. Although respondent was not charged with this impropriety, there is clear and convincing evidence in the record that he violated that RPC. Accordingly, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

The thorny issue in this case is fashioning the adequate measure of discipline. For grossly neglecting three matters for the same client, misrepresenting their status to that client and failing to return the file to another client, respondent received a reprimand in 2003. In 2004, he received a six-month suspension for misconduct in a total of six matters: he was found guilty of lack of diligence, gross neglect and failure to communicate with clients in four of those six matters; in four, he made misrepresentations about their status; and, in one, he did not promptly turn over the file to the client, did not comply with court orders for the return of the file and caused his adversary to file three motions to obtain the file. Recently, we reviewed two other matters: in both, respondent exhibited lack of diligence and failure to communicate with the clients; in one of them, he was also guilty of gross neglect. We determined that no additional discipline was warranted,

reasoning that, if the two matters had been heard in conjunction with the prior six matters -- for which respondent was suspended for six months -- the discipline would not have exceeded a six-month suspension. Our decision in that matter stated that, in the future, we might take a different view if additional cases were presented for our review. In the Matter of John A. Tunney, supra, Docket No. 04-387 (slip op. at 15).

The issue that confronts us is whether additional discipline is required and, if so, to what extent. The answer is not readily apparent and requires a close examination of several factors, including whether this is a matter of an attorney who continued to act unethically after being disciplined, in which case additional -- indeed, more severe -- discipline is required, or whether respondent's conduct in these nine matters occurred during the same time frame, in which case it would have been beneficial to dispose of all nine matters in one fell swoop.

More simply stated, do these new matters suggest that respondent has not learned from prior mistakes or are they part and parcel of the overall pattern of misconduct exhibited by respondent during a defined and limited period of time? The difference is crucial because an attorney's failure to conform to the rules of the profession after the attorney has been

disciplined reflects willfulness, defiance even. On the other hand, if an attorney has an unblemished disciplinary record for a long period and then a pattern of misconduct occurs during a specified time frame, with no further ethics incidents reported, there may be a reason for that cluster of transgressions. The attorney will not escape a finding that the conduct was unethical, but at least there is an explanation therefor. Such matters are obviously viewed with more indulgence than the matters that show obstreperous resistance to atonement.

The totality of the factors in this case strongly suggests that it falls into the more favorable category. Before the grievances that led to respondent's reprimand in 2003, he had a spotless disciplinary history since his 1987 bar admission. The record is replete with praise and respect for his personal and professional integrity, competence and regard for clients' welfare. Trouble began to hit in the mid-nineties, however. Documents were not filed, phone calls went unreturned and, despite respondent's good character, misrepresentations were made in some instances. Altogether, respondent's unethical acts covered a period of approximately five years. In 2001, he hit rock bottom. That led him to receive prompt treatment and medication. He is now symptom-free, according to Dr. Vetrano, who has been treating him since July 2001.

Cases that present ethics infractions similar to respondent's, same or approximate number of grievances, and of comparable duration generally result in a six-month or one-year suspension. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations; no evidence of mental illness); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters, failed to cooperate with the investigation of the grievances, and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a reprimand in 1990 for gross neglect in two matters -- at which

time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee -- and another reprimand in 1996 for failure to communicate, failure to supervise office staff and failure to release a file to a client); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Chamish, 128 N.J. 110 (1992) (six-month suspension imposed for misconduct in six matters, including failure to communicate with clients and lack of diligence; in one of the matters, the attorney represented both driver and passenger in a motor vehicle case and then filed suit on behalf of the driver through the unauthorized use of another attorney's name and forgery of the attorney's signature on the complaint); In re Martin, 118 N.J. 239 (1990) (attorney suspended for six months for engaging in a pattern of neglect in seven matters for a period of five years, by routinely failing to conduct discovery and to apprise clients of the status of their cases; in two matters, the attorney entered into settlement agreements without the clients' consent and, in one matter, advanced funds to a client; more seriously,

during a meeting with a client, the attorney put a gun and a box of bullets on his desk in a menacing way, thereby frightening the client); In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; the attorney had been reprimanded before); In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes and

blamed clients and courts therefor); In re Lawnick, 162 N.J. 113 (1999) (one-year suspension for attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and to cooperate with the investigation of the ethics grievances; the matter proceeded on a default basis; on the same date that the attorney was suspended for six months, the Court suspended him for three months for lack of diligence, failure to communicate with the client, failure to surrender documents and failure to cooperate with disciplinary authorities; that disciplinary matter also proceeded as a default); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for attorney who engaged in unethical conduct in seven matters; the attorney either grossly neglected them or failed to act with diligence, failed to keep the clients informed of the progress of their matters and, in two cases, misrepresented their status to the clients; the attorney also failed to cooperate with disciplinary authorities; in a subsequent matter, In re Herron, 144 N.J. 158 (1996), the Court suspended the attorney for one year, retroactive to the starting date of the first one-year suspension, for misconduct in two matters, including gross neglect, lack of diligence, failure to communicate with clients and failure to cooperate with

disciplinary authorities; the attorney's conduct in that subsequent matter occurred after he was on notice that his conduct in the prior seven matters was under scrutiny by ethics authorities).

Altogether, respondent mishandled fourteen matters: three that caused him to receive a reprimand, six that led to a six-month suspension, two for which we believed that no additional discipline was required, and the instant three matters. As stated above, our latest decision noted that further discipline might be warranted if additional matters were presented for our review. We believe that the addition of these three new matters to the sum total of respondent's infractions merits supplemental discipline -- a six-month suspension.

Because, however, respondent's unethical conduct in all these matters took place during the same time frame and because it would have been beneficial if they had been consolidated for resolution, we determine that the suspension should be retroactive to October 29, 2004, the date of respondent's six-month suspension. This result will allow respondent to resume practicing law, subject, of course, to the Court's approval of our recommendation for his reinstatement and to the safeguards contained in the 2004 six-month suspension order (two-year proctorship by an attorney other than respondent's partner and

prohibition of engaging in the sole practice of law), which should remain in effect. Our decision to make the suspension retroactive was also prompted by respondent's counsel's argument that to suspend respondent at this time would be unduly punitive because of the delay in the processing of this matter. Counsel pointed out that seven months elapsed between the DEC hearing, February 2005, and the issuance of its report, September 2005.

Member Boylan did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Isabel Frank

By Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John A. Tunney
Docket No. DRB 05-290

Argued: October 20, 2005

Decided: November 2, 2005

Disposition: Retroactive six-month suspension

Members	Retroactive Six-month Suspension	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:	8				1

By Isabel Frank
Julianne K. DeCore
Chief Counsel