SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-437
District Docket No. VIII-03-044E

IN THE MATTER OF :
:
RONALD W. SPEVACK :
:
AN ATTORNEY AT LAW :

Decision

Argued: February 17, 2005

Decided: March 16, 2005

Craig M. Terkowitz appeared on behalf of the District VIII Ethics Committee.

Pamela L. Brause 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 VIII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1964. He is the senior partner in the firm of Spevack and Cannan, in Iselin, New Jersey. In 1997, he was reprimanded for commingling client and personal funds and failing to maintain proper trust

and business account records. In re Spevack, 147 N.J. 272 (1997).[1]

In 1995, Bernetta Chandler retained the law firm of Spevack and Cannan ("the law firm") to file a federal claim with the United Stated Department of Labor ("the DOL") stemming from an incident that took place while she worked for the United States Post Office at Plainfield, New Jersey. Chandler sustained several psychological injuries, including post-traumatic stress disorder, as a result of being held up at gunpoint. Respondent handled that claim.

Six years later, in 2001, Chandler's injuries allegedly worsened, forcing her to cease working. She again sought the law firm's representation on pursuing an additional claim related to the 1995 incident. Respondent did not handle the second claim, which was assigned to other attorneys in the law firm. Respondent testified that he has never handled federal workers' compensation claims. His sphere of practice consisted of product liability, motor vehicle, and medical malpractice cases.

According to Chandler, she first dealt with associate Dina Shah, then with associate Jay Bernstein, and finally with

[1] Simultaneously with this matter, we reviewed a recommendation for an admonition in DRB 04-405. We issued a letter of admonition on February 22, 2005 (two members voted for dismissal).

associate Robert Nemshick.[2] Jay Bernstein was the senior associate in charge of the workers' compensation department. As such, he was Nemshick's direct supervisor. Bernstein, in turn, reported directly to respondent.

Chandler testified that she "basically dealt with Nemshick" in connection with the second claim. Asked if she had "deal[t] with [respondent] at all initially with regard to the second claim," she replied, "I don't remember. I remember talking to him at some point." Respondent denied any involvement in that second claim.

According to Chandler, from January 2001 to January 2002, all her discussions with Nemshick were over the telephone. During those conversations, Nemshick would tell her that the matter was progressing and that he was awaiting a hearing date. Chandler did remember one visit to the law firm, in May 2001:

> It was weird because when I was sitting there talking to [Nemshick] and he says don't worry, we are taking care of it. We are awaiting a hearing date. Get yourself together, we'll compensate you for the difference of what you were getting and what you are getting now and what I thought was weird when he walked us out, he walked out

[2] Nemshick was suspended for three months in 2004, for gross neglect, lack of diligence, failure to communicate with clients, and misrepresentation to clients about the status of their cases. Nemshick's misconduct, which took place during his employment with the Spevack and Cannan firm, spanned three client matters and proceeded before us as defaults. In re Nemshick, 180 N.J. 304 (2004).

> with the file and put the file in [his] car. I says [sic] to my husband, he must be working on my thing at home. I didn't think anything of it.
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> (T21-21 to T22-4.)[3]

On June 16, 2001, the DOL dismissed Chandler's claim. Chandler was not informed of the dismissal.

From January through September 2002, Chandler's discussions about the case also took place with Nemshick. In September 2002, Nemshick was discharged from the law firm, a circumstance that, according to Chandler, was not communicated to her.

By letter dated September 28, 2002, respondent asked Chandler to schedule an appointment with him to discuss her case. When Chandler appeared, on October 12, 2002, respondent told her that his office could not locate her file. He suggested that she reschedule the appointment, which she did.

Chandler described what took place on the rescheduled date, in November 2002:

> I am sitting and [respondent is] walking on the side of his desk. I am sick of this case. I am never taking another government case. It took damn long. I said who is he talking about? I turned around. I thought there was somebody behind me . . . . I'm not taking this case no more. I am going to tell him I'm not handling this. Taking stuff out of the folder, throwing it in the garbage. He took the thing and threw it

[3] T refers to the transcript of the DEC hearing on September 14, 2004.

> across the room. I said who the hell is he talking to like this. He said get out of my office, this case that's it. I am totally ballistic. Totally just trying – I could not believe that was happening like what is he doing? Why is he saying this? I didn't have a clue, nothing whatsoever. Me and my husband got in the car, drove home.
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> (T27-19 to T28-11.)

Chandler testified that the file that respondent gave her contained "10, 15, 20 pages," being considerably less voluminous than the sizable file that she had seen with Nemshick.

Chandler returned to respondent's office on two later occasions in order to retrieve her file, but received no other documentation. According to Chandler, she was still unaware that the DOL had denied her claim.

Thereafter, Chandler sought the advice of seven or eight attorneys, who, she claims, refused to take her case because she did not have a file. One of those attorneys wrote a letter to the DOL to ascertain the status of her claim. It was then that Chandler discovered that her claim had been dismissed.

According to Chandler, neither respondent nor anyone from his office advised her of her rights of reconsideration or rights of appeal with regard to the DOL decision.[4] Chandler

[4] There is reference in the record that the time for the filing of a motion for reconsideration is one year and the time for the filing of an appeal is ninety days.

testified that no one ever told her that she "didn't have a case."

Respondent's recollection of the events differed sharply from Chandler's. According to respondent, he believed that the case had no merit, informed Chandler that he would not pursue it further, and advised her to consult with other attorneys. Respondent denied telling Chandler to "get out of his office." He explained:

> When she came back I said to her I am not going to proceed further on the file. I said to her take your papers and seek other advice from other attorneys. The reason why no attorney took this case is the same reason I stated, cannot meet the burden of proof of standards for disability. You cannot win this case before the board. You can't relate a current disability beginning in 2001 or even 2004, the current disability to 1995. That is why no attorney would take the case. That is why I refused to continue to take the case.
>
> I apologized for Mr. Nemshick's conduct. I did not know about it. I didn't supervise him. I didn't have control over him. I never had any knowledge of this file and never had. I feel sorry for Mrs. Chandler's present status. She's angry, she's angry at a lot of things, including me. Unfortunately, this hearing should not be used to satisfy Mrs. Chandler's anger. I personally did nothing wrong with this file

> and personally did not commit any ethical violations in my refusing to continue with the file.
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> (T58-4 to 24.)

In disclaiming any responsibility for Nemshick's conduct, respondent emphasized that Jay Bernstein, not he, was Nemshick's direct supervisor:

> My defense is twofold. Unfortunately for Mrs. Chandler Mr. Nemshick was handling this case improperly and incompetently. I personally didn't have control over the file. Mr. Nemshick . . . was supervised by Mr. Bernstein. To hold me responsible back two levels is beyond the violation of ethical standards. It's asking too much and referring to say that some senior [partner] is supposed to know what everybody is doing two levels down is beyond the requirements of the ethics violation. It is too high of a standard. Otherwise, every senior partner would be held responsible every [sic] mistake made by the junior level down the firm. [5]
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> (T85-12 to 25.)

According to respondent, "part of [Nemshick's] practice was hiding files" (T55). Respondent stated that, after Nemshick's dismissal from the law firm, Nemshick disappeared for several months. Attempts to obtain his cooperation with the law firm were fruitless; client files, including Chandler's, were never found. Respondent testified:

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[5] No grievance was filed against Bernstein.

> Something I believe Mrs. Chandler said [Nemshick] took the file and put it in his car probably the last time he was in the office sometime in 2002, put the file in his car that was it. That is why we couldn't find it in September when he left the office.
>
> He had done that with other files we eventually found out . . . . I had nothing to do with this file. I didn't supervise the attorney. I didn't control the attorney.
>
> When Mr. Nemshick left the office we began to inspect every file that he did including this one. I went through their file. FMLA has very strict standards as to disability. The standards are set forth in the [DOL] decision. Of [sic] reviewing whatever we had on the file I felt it would be impossible to meet those standards in this case to prove that the 2001 disability had anything to do with 1995. In fact, she admits the disability dealt with minor surgical proceeding [sic] for her child.
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> (T55-20 to T56-18.)
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> We could not beat [sic] the burden of proof to prove the causal relationship. If you read the [psychiatrist's report] over, it is a weak report. She gets antidepressants, that is not from post traumatic stress, that is another disease she's treating. She suffers from depression, not post traumatic stress. That would not hold up in court. She would be ripped to shreds in court.
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> (T62-24 to T63-5.)

Respondent admitted that he did not know of the disposition of Chandler's claim and that he did not contact the DOL to determine its status, reasoning that "the case had no merit. I

was not going any further with it."[6] He also admitted that he did not advise Chandler of the time limitations for filing a motion for reconsideration or an appeal. Asked if it was not his duty to "tell her of her future rights," respondent replied that his "obligation is to advise her she can seek other attorneys . . . . My obligation is to say I don't think the case has merit. I am not going to proceed further, you may seek other attorney." Queried further if it was not his obligation to explain to Chandler why the case had no merit, respondent answered:

> I told her verbally. My office had been handling the case in a matter I hoped they would have told her earlier than we did. They should have given her the file and speak [sic] to other attorney . . . .
>
> I told her this is all we found in your file. I gave it to her. I don't think your case has merit. There is too much time between the 1995 episode and 2001. I told her she has other emotional problems unrelated to her work.
>
> . . . .
>
> Depression is a chemical imbalance in the body not due – you can't get depression from a traumatic event. Post traumatic stress disorder, that's treated differently.
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> (T66-23 to T67-22.)

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[6] Contrary to respondent's testimony, his counsel's brief states that, when respondent reviewed the file, he learned that Chandler's claim had been rejected.

In her brief to us, respondent's counsel argued that to continue to pursue Chandler's claim would have violated the Rules of Professional Conduct, as respondent believed it to be frivolous.[7]

The complaint charged respondent with failure to keep Chandler reasonably informed about the status of her case, a violation of RPC 1.4(a); failure to explain the matter to the extent reasonably necessary to permit her to make informed decisions about the representation, a violation of RPC 1.4(b); and failure to protect Chandler's interests upon termination of the representation by "unilaterally withdrawing from the case, without receiving any assurance the complainant could retain new counsel to assist her and, without providing the complainant with a copy of her file," a violation of RPC 1.16(b).

The complaint was later amended to include charges of gross neglect, a violation of RPC 1.1(a), and lack of diligence, a violation of RPC 1.3. In addition, the hearing panel chair subsequently wrote a letter to respondent and to the presenter advising them that respondent's answer to the amended complaint raised the specter of violations of RPC 5.1(a) (every law firm member must undertake measures giving reasonable assurance that

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[7] RPC 3.1 prohibits a lawyer from bringing a proceeding and asserting or controverting an issue that the lawyer reasonably believes is frivolous.

all lawyers in the firm conform to the Rules of Professional Conduct), RPC 5.1(b) (a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer's conduct conform to the Rules of Professional Conduct), RPC 5.1(c)(2) (a lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the direct supervisor knows of the conduct at a time its consequences can be avoided or mitigated but fails to take reasonable remedial action), and RPC 8.3(a) (failure to report professional misconduct). The panel chair's letter stated that "[t]he pleadings should be considered amended accordingly."[8]

Refraining "from speculating whether Grievant would have prevailed, had the claim been properly handled," the DEC found that respondent violated RPC 1.4(a) by "fail[ing] to search his computer, or to give Grievant any information concerning her file, other than the ten or so pages, and [by failing] to tell Grievant that her supplemental claim had been dismissed . . . and to Answer [sic] Grievant's questions . . . ;" RPC 1.4(b) by "refus[ing] to provide information to Grievant at any point in

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[8] The complaint was amended on the hearing panel's own initiative, apparently without any prodding from the presenter. The propriety of this procedure at the pleadings stage is questionable, in light of the panel's need to avoid any appearance of partiality.

time, or to tell Grievant what procedural options remained open . . . ;" RPC 1.1(a) by "fail[ing] to take any steps whatsoever to protect Grievant's interests, most especially after learning of Mr. Nemshick's derelictions . . . ;" RPC 1.3 by "the time that Respondent allowed to pass from his first awareness of Mr. Nemshick's derelictions to the time that he finally provided the file to Grievant . . . ;" RPC 1.16(b) by unilaterally deciding to "terminate all activity on Grievant's file . . . ;" RPC 5.1(a) by "fail[ing], as a managing partner, to exercise any supervision whatsoever over members of his firm . . . ;" RPC 5.1(b) by "fail[ing] to ensure Mr. Nemshick's compliance with the Rules of Professional Responsibility [sic] . . . ;" and RPC 5.1(c)(2) by "fail[ing] to take any steps whatsoever to mitigate the consequences of the conduct of his subordinate." Noting that respondent had not produced Bernstein as a witness or "otherwise account for his absence," the DEC drew "adverse inferences against Respondent on account of that failure." The DEC dismissed the charged violation of RPC 8.3 (a) for lack of clear and convincing evidence.

The DEC recommended a six-month suspension, based on the following factors:

> a. Respondent insisted from the beginning, and continues to insist, that his actions were completely appropriate. He evinces

> utter lack of recognition of his deviations from professional standards;
>
> b. Respondent attempted to defend against the Complaint on the ground that Grievant's claim lacked merit. His defense included attacks on Grievant's emotional stability. In proffering this defense, Grievant [sic] evinced a complete lack of understanding of the issues relating to the Complaint. This defense is especially ironic in view of the fact that Grievant's very claim arose from and related to traumatic emotional injury;
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> c. While Respondent did offer an apology to Grievant during the hearing, he evinced no recognition whatsoever to [sic] her plight. and offered no acknowledgement of the disgraceful manner in which he treated her;
>
> d. Respondent already has a disciplinary history. More particularly, Respondent was previously reprimanded for violation of R.P.C. 1.15(d).
>
> [HPR¶7a to HPR¶7d.][9]

Respondent appeared pro se at the hearing below. Prior to oral argument before us, he obtained legal representation. Over the objection of the presenter, respondent's counsel submitted certain materials -- certifications, affidavits, and character reference letters -- to supplement the record developed at the DEC hearing.

As to the latter, because their admission into the record is liberally granted at any stage of the ethics proceedings, we determine to consider them in mitigation of respondent's

[9] HPR refers to the hearing panel report.

conduct. With regard to the certifications and affidavits, we conclude that we need not consider them in reaching our decision. We find that the record developed at the DEC hearing contains sufficient evidence to satisfy the clear and convincing standard that governs disciplinary matters.

Following a de novo review of the record, we find that the evidence clearly and convincingly establishes that respondent's conduct was unethical. For the reasons expressed below, however, we dismiss all of the charges of the complaint, except for respondent's failure to contact the DOL to ascertain the status of the case and to explain the case to Chandler to the extent reasonably necessary to permit her to make an informed decision about the representation, a violation of RPC 1.4(b).

As noted earlier, the DEC found that respondent's conduct in this matter constituted gross neglect; lack of diligence; failure to keep Chandler apprised of the status of her claim; failure to explain the matter to her to allow her to make informed decisions about the representation; improper, unilateral withdrawal from the representation; failure, as a partner in the law firm, to undertake measures giving reasonable assurance that Nemshick's conduct comported with the Rules of Professional Conduct; failure to ensure, as Nemshick's direct supervisor, that Nemshick's conduct conformed to the Rules of

Professional Conduct; and, finally, failure, as Nemshick's direct supervisor, to take remedial action in the matter, despite knowing of Nemshick's conduct at a time when its consequences could be avoided or mitigated.

With regard to respondent's supervisory obligations, in order to find that he was "vicariously" responsible for Nemshick's conduct the evidence must establish (1) that Nemshick mishandled the matter, (2) that, as the firm's senior partner, respondent failed to undertake measures giving reasonable assurance that Nemshick -- and Bernstein too -- conformed to the Rules of Professional Conduct, (3) that respondent was Nemshick's direct supervisor; (4) that, as such, respondent failed to ensure that Nemshick complied with the rules of the profession, and (4) that, as Nemshick's direct supervisor, respondent knew of Nemshick's conduct at a time when it could be avoided or mitigated, and yet failed to take remedial action.

First, we find no clear and convincing evidence that Nemshick "dropped the ball" in the case. Nothing in the record demonstrates that the DOL's dismissal of Chandler's claim was the result of inaction or neglect on Nemshick's part. The only proven infraction was his failure to inform Chandler that her claim had been dismissed in June 2001. This dismissal notwithstanding, for a period of at least fifteen months -- from

June 2001 through September 2002 -- Nemshick kept telling Chandler that he was awaiting a trial date. Whether Nemshick knowingly misinformed Chandler of the status of her case is unknown; nothing in the record shows that the law firm had received the DOL's decision and that, aware of this determination, Nemshick falsely assured Chandler that the case was proceeding apace. The only possible finding, thus, is that Nemshick did not communicate the status of the case to Chandler, a violation of RPC 1.4(a).

Under the rules, respondent should be held responsible for Nemshick's conduct on this score only if the proofs clearly and convincingly show (1) that respondent was Nemshick's direct supervisor, (2) that, either as a partner in the firm or as Nemshick's direct supervisor, respondent failed to take reasonable measures to ensure that Nemshick conformed to the Rules of Professional Conduct (RPC 5.1(a) and RPC 5.1(b)), or (3) that, as Nemshicks' direct supervisor, respondent knew that Nemshick was not communicating with Chandler or otherwise mishandling her claim, and failed to take remedial action at a time when this conduct could have been avoided or mitigated (RPC 5.1(c)(2)). Nothing in this record demonstrates, to a clear and convincing standard, that this was the case.

Indeed, there is no evidence whatsoever that respondent, as a senior partner in the law firm, failed to take reasonable measures to ensure that Nemshick complied with the ethics rules (RPC 5.1(a)). Nothing in the record indicates that respondent was or should have been aware of any personal or professional problems facing Nemshick. Similarly, there is no evidence that respondent exercised direct supervision over Nemshick (RPC 5.1(b) and (c)(2)). In fact, the evidence is to the contrary. Respondent testified extensively about the structure of the law firm: Nemshick was supervised directly by Bernstein, who was in charge of the workers' compensation department. Nothing contradicted respondent's testimony. Moreover, the law firm's letterhead lists Bernstein as "Supervising Attorney Workers [sic] Compensation." In light of the foregoing, we dismiss all of the charges relating to respondent's responsibilities as a partner or supervisory lawyer: RPC 5.1(a), RPC 5.1 (b), and RPC 5.1(c)(2).

We also dismiss the allegations that respondent was guilty of gross neglect and lack of diligence. It was Nemshick's, not respondent's, duty to provide competent representation to Chandler. As stated earlier, respondent cannot be held responsible for Nemshick's ethics breaches: he was not Nemshick's direct supervisor and he was not aware of any

problems with Nemshick's representation of clients. As to respondent's conduct toward the case after Nemshick's departure from the firm, we find that it more properly constituted a violation of RPC 1.4(b), as seen below, than a violation of RPC 1.1(a).

We are also unable to agree with the DEC's finding that respondent's delay in returning the file to Chandler violated RPC 1.3 (lack of diligence). The proofs show that the two-month delay -- from September to November 2002 -- was the product of the firm's inability to find the file.[10] In November 2002, when respondent met with Chandler, the file that he had in his possession consisted only of ten or twenty pages, which he gave to Chandler. From September to November 2002, the law firm was attempting to locate Nemshick to obtain the file. Nemshick's whereabouts, however, were unknown for several months. Later, he refused to cooperate with the firm. The file was never recovered. Under these circumstances, a finding that respondent lacked diligence is unwarranted.

There remain the charges that respondent himself did not communicate the status of the case to Chandler (RPC 1.4(a)), did not explain the case to her in detail to allow her to make

[10] This was corroborated by Chandler, who saw Nemshick put her file in the trunk of his car.

informed decisions about her next course of action (RPC 1.4(b)), and improperly terminated the representation (RPC 1.16(b)).

As to RPC 1.4(a), the only possible transgression on respondent's part was his failure to inform Chandler of the dismissal of her claim, when he met with her in October and November 2002. Respondent claimed that he was unaware of the dismissal. He testified that, when he met with Chandler, he did not contact the DOL to find out the status of the case because he believed that his only obligation was to advise her that her case had no merit and to suggest that she consult with other attorneys.

Respondent, however, should have contacted the DOL at that time. In order to explain in detail the posture of the case to Chandler, to properly advise her if her claim was meritorious or not, and to recommend the next course of action, respondent should have ascertained its current status. Although this omission, in our view, is not technically a violation of RPC 1.4(a), it is a violation of RPC 1.4(b) (a lawyer shall explain the matter to the client to the extent reasonably necessary to enable the client to make an informed decision about the representation). Respondent's mere statement to Chandler that her claim had no merit did not discharge his duties under that RPC. At that time, a motion for reconsideration, if not an

appeal, was still a viable option. We find, thus, that respondent's conduct in this regard violated RPC 1.4(b).

As to the charge that respondent improperly terminated the representation, under RPC 1.16 (b) respondent could have withdrawn from the case if the withdrawal could have been accomplished without material adverse effect on Chandler's interests, or if Chandler had insisted on pursuing an objective that respondent considered imprudent. No evidence on either score was introduced. In fact, respondent contended that to continue to pursue the claim would have been unethical, as he believed that it was non-meritorious. We, therefore, dismiss the charge that respondent violated RPC 1.16(b).

Violations of RPC 1.4(b) result in admonitions, even if accompanied by other ethics improprieties. See, e.g., In the Matter of Stephen K. Fletcher, DRB 04-077 (April 16, 2004) (admonition for attorney who, in a real estate matter, did not explain to the client, in detail, the contents of the RESPA statement, did not apprise the client of problems that surfaced at the closing, and did not keep the client informed of the status of the case after the closing; also, the attorney grossly neglected the matter); In the Matter of Carolyn E. Arch, DRB 02-188 (July 24, 2002) (admonition for attorney who did not inform the client that her workers' compensation case had been

dismissed and did not make clear to her that she did not have a viable claim for discrimination or wrongful termination of employment; as a result, the client did not understand that the attorney would not be pursuing those additional claims on her behalf; the attorney also failed to keep the client reasonably informed about the status of her case; the attorney violated RPC 1.4(a) and RPC 1.4(b)); In the Matter of John S. Giava, DRB 01-455 (March 15, 2002) (admonition for attorney who, instead of obtaining a wage execution against a defaulting buyer of real estate previously owned by his clients, entered into an agreement with the buyer for monthly installment payments, without first consulting with the clients, a violation of RPC 1.4(b); the attorney also did not timely reply to the clients' reasonable requests for information about the case and did not provide them with a writing setting forth the basis or rate for his fee, thereby violating RPC 1.4(a) and RPC 1.5(b), respectively); In the Matter of Robert F. Gold, DRB 99-320 (November 29, 1999) (admonition for attorney who did not comply with the client's numerous requests for information about the progress of the case and did not communicate an expert's opinion to the client, violations of RPC 1.4(a) and RPC 1.4(b)); In the Matter of Michael A. Amantia, DRB 98-402 (September 22, 1999) (admonition for attorney who failed to keep estate beneficiaries

sufficiently informed of the substance of the case, failed to inform them about overdue taxes and a deathbed gift -- information that was critical to allow them to make informed decisions regarding the case -- failed to diligently pursue the settlement of the estate, and grossly neglected its handling, violations of RPC 1.4(a), RPC 1.4(b), RPC 1.3, and RPC 1.1(a), respectively); In the Matter of Gerald M. Lynch, DRB 99-105 (May 28, 1999) (admonition for attorney who, after being told of the client's dissatisfaction with an arbitration award, did not file the necessary paperwork to reject the award and did not inform the client of this circumstance, a violation of RPC 1.4(b); the attorney also failed to properly notify the client of the receipt of settlement proceeds and to promptly deliver them to her, a violation of RPC 1.15(b); finally, the attorney failed to reply to disciplinary authorities' requests for information about the grievance, a violation of RPC 8.1(b)).

Guided by the above case law, we conclude that an admonition is the appropriate level of discipline for respondent's conduct in this matter. In our opinion, respondent's prior reprimand for recordkeeping violations should not warrant a progressive increase in the degree of discipline, that is, the imposition of the next level of sanction -- a censure or a three-month suspension. Respondent does not have an

extensive ethics history and, because the conduct in the prior matter did not relate to his representation of a client, it cannot be said that he has refused to learn from prior, similar mistakes.

The numerous letters submitted on respondent's behalf by clients, family members, professional acquaintances, friends, and other attorneys reinforce our conviction that he should receive no more than an admonition. All those individuals attested to respondent's excellence in professionalism, legal skills, commitment to hard work, involvement in civic activities, personal character, professional reputation, and dedication to his clients' well-being. This impressive array of testimony provided considerable insight into respondent's life and work ethics, and into his firm's culture. For instance, attorneys either formerly or currently employed by respondent's law firm wrote that respondent constantly encouraged, even prodded, them to attend legal seminars in order to maintain a high degree of professional competence. Respondent's law partner wrote that respondent himself attends ATLA and ICLE seminars on most Saturday mornings "in an attempt to obtain, even after a long and distinguished career, that one more suggestion or new theory that might be ultimately beneficial to one of his clients." Respondent's son, also an attorney in his

firm, wrote that his father "may have mustard on his tie, but his actions always demonstrate an upright and resilient moral fiber."

The foregoing adds strength to our conclusion that respondent's conduct was not the product of poor office procedures or indifference to the client's welfare, but the result of choices that he believed appropriate. Hence our decision to impose discipline no higher than an admonition.

Clearly, a six-month suspension as recommended by the DEC, is excessive discipline. While respondent might have showed a glimpse of lack of recognition of wrongdoing in this matter, he was justified in disclaiming responsibility for the charged violations, except for RPC 1.4(b). Although the DEC reproached respondent for not admitting his mistakes, understandably one protests vigorously when accused of mistakes that one strongly believes have not been committed. In addition, contrary to the DEC's remark, respondent not only apologized to Chandler, but showed sympathy for her plight. We did not, thus, consider the factors cited for the DEC's justification of a six-month suspension.

We also note that the DEC improperly drew an adverse inference against respondent for his failure to produce Bernstein as a witness. As pointed out in respondent's

counsel's brief, the latter action violated State v. Clawans, 38, N.J. 162 (1962), because (1) Bernstein was available to the presenter as well, and (2) the presenter did not advise the hearing panel, at the close of his case, that he intended to request a finding of adverse inference, thereby preventing respondent from either calling Bernstein as a witness or demonstrating to the panel, by argument or proof, the reason for not producing Bernstein.

After balancing the nature of respondent's conduct, his prior discipline, and the compelling mitigation offered on his behalf, we determine that an admonition is the appropriate quantum of discipline for his violation of RPC 1.4(b).

Member Ruth Lolla 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: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald W. Spevack
Docket No. DRB 04-437

Argued: February 17, 2005

Decided: March 16, 2005

Disposition: Admonition

Members	Admonition	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan	X				
Holmes	X				
Lolla					X
Pashman	X				
Schwartz	X				
Stanton	X				
Wissinger	X				
Total:	8				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel