SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-124
District Docket No. IIIA-03-024E

IN THE MATTER OF	:
	:
H. ALTON NEFF	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 21, 2005

Decided: August 31, 2005

Jeff J. Horn appeared on behalf of the District IIIA Ethics Committee.

John F. Russo, Sr. appeared on behalf of respondent.

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

This matter was originally before us on a recommendation for an admonition filed by the District IIIA Ethics Committee ("DEC"), which we determined to bring on for oral argument. Respondent was admitted to the New Jersey bar in 1967. He maintains a law office in Brick, New Jersey. In 1987, he was privately reprimanded for engaging in a conflict of interest. Specifically, after respondent acquired title to a landlocked parcel of property, he continued to represent a client who was a

shareholder in the corporation that held title to the adjacent road frontage property. Later, when respondent had the opportunity to purchase the adjacent road frontage property from the corporation, instead of protecting his client's interests, he allowed his professional judgment to be clouded by his own financial purposes. He declined to pay the $75,000 price demanded by the client and sought title to the property through assignment and subsequent foreclosure of the mortgage loan. In the Matter of H. Alton Neff, DRB 86-075 (December 31, 1987).

At a real estate closing that took place on July 28, 2003, respondent represented the seller/builder. Although Tom DiChiara, of the law firm of Drazin and Warshaw, had been representing the buyers (John and Sharon Zeccardi), another attorney from the firm, Warren Hare, attended the closing on behalf of the Zeccardis. Hare is the grievant in this matter.

According to respondent, his client had extended certain courtesies to the Zeccardis after they did not appear for a time-of-the-essence closing. Apparently, the contract entitled the seller to retain the deposit as liquidated damages if the buyers did not perform as agreed. When the Zeccardis did not comply with the seller's time-of-the-essence letter, respondent took the position that they had forfeited their down payment. According to respondent,

> . . . the former attorney for Mr. and Mrs. Zeccardi decided that he was no longer representing them. Mr. DiChiara, a new attorney for Mr. and Mrs. Zeccardi, contacted me and requested that an accommodation be made to his clients, since he did not want them to lose their entire deposit in the amount of $21,294.00. In order to accommodate Mr. DiChiara, my client and I discussed the retention of the deposit in the amount of $21,294.00. Although my client was legally entitled to retain the deposit, I convinced my client to accept only $10,600.00 (one half of the deposit); provided that Mr. and Mrs. Zeccardi pay the extra legal fee that my client had incurred. Said legal fees were in the amount of Seven Hundred Fifty ($750.00) Dollars. At that point in time Mr. and Mrs. Zeccardi and Mr. DiChiara were grateful and documents confirming this arrangement were circulated and signed . . . . Please note that the attached document provides that a closing must be concluded on July 25, 2003 or else the buyers relinquish the entire deposit!
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> [RG1-RG2.][1]

By letter dated June 18, 2003, DiChiara confirmed the above agreement, including the Zeccardis' obligation to pay the extra $750 fee to respondent. According to Hare, although DiChiara had told him about "a penalty that was imposed of almost $11,000 against the Zeccardis," Hare was not aware of the $750 fee, which was not listed on the RESPA statement prepared by his office.

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[1] RG refers to respondent's reply to the grievance.

The closing took place at respondent's office building, on July 28, 2003. Respondent was in a conference room on the other side of the building. According to respondent, "[he does] not attend these closings, since [he] review[s] all of the necessary paperwork prior to the closing. A paralegal attends the closing on behalf of the builder and exchanges documents." Hare's grievance states that [respondent's] staff handled the closing transaction, including signing various closing documents.[2]

After Hare reviewed the closing documents, including the deed and affidavit of title, he presented the appropriate checks to respondent's paralegal. Hare then put "all of the closing documents that [he] had just received into [his] file secured with a rubber band."

Hare was ready to leave when the paralegal presented him with the letter referencing the $750 fee. Hare informed the paralegal that the Zeccardis did not have these additional funds with them. According to Hare, he was not "familiar with all of the negotiations that took place in this lenghty transaction;" in addition, the Zeccardis thought that the $10,600 sum already included all legal fees. The Zeccardis then offered to issue a

[2] The record does not reveal which documents the paralegal signed. The closing documents are not part of the record. As seen below, however, there was testimony that the paralegal, not respondent, signed the RESPA statement on behalf of the seller.

post-dated check for two days later to give them time to obtain the funds from a friend or family member.

After consulting with respondent, his paralegal announced that the Zeccardis' offer was unacceptable to him. Hare then called DiChiara, who instructed him to urge the Zeccardis to obtain the money. Indeed, the Zeccardis began to make phone calls in an attempt to raise the money.

At this juncture, respondent came into the room and voiced his opposition to accepting a post-dated check. Respondent's paralegal, Rose Novozinsky, testified that "[to] the best of [her] recollection, [Hare] said my clients have nowhere to go. Let's work this out. Please take the postdated check and Mr. Neff was saying he's not taking it." Hare then called DiChiara, who also spoke to respondent. Respondent would not change his position, however, and demanded that Hare return the closing documents. Hare replied that he needed to speak to DiChiara, and once again called DiChiara. When Hare picked up the receiver to get instructions from DiChiara on how to proceed, respondent grabbed Hare's file and went either into the hallway or into another room separated by a glass window. Hare remembered saying to DiChiara, "he stole my file." Hare told respondent that, if he did not return his client's entire file, he would contact the police. Hare testified about the events that followed:

> I explained to Tom what was going on and I saw Mr. Neff through the glass pane in his conference room to his other office, actually saw his hands moving as if he were pulling documents from my file. I yelled out something to the effect of you stole my file. That's attorney-client privileged documents. Give me my file, and I did shout out something like I can have you arrested for stealing my file. He yelled something out, I couldn't really make it out from the other room.
>
> I'm still talking to Tom. Tom is instructing me to get the file back and get the documents, whatever they were, and I believe at that point I hung up the phone with Tom and I believe Mr. Neff then came back into the room, took my file and threw it on the table, picked up the checks that were in front of him and threw then back at me and started yelling at me to get out of the office, that I was a trespasser.
>
> Again, my clients are still sitting there and I was shocked. I wanted – I demanded my documents back and he just kept yelling at me to get out of the office.
>
> At that point – well at some point he left the room. Rose [the paralegal] was still in the room and there was another lady in the room who I don't know and they were trying to calm him down. The three of them eventually left.
>
> I sat there with my clients and eventually one of the ladies came back and said or they intercommed, I don't recall which, somebody from his office said we have called the police. The police are on their way . . . .
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> (T45-6 to T46-13.)[3]

At that point, the Zeccardis left. Hare stayed. According to Hare, "Tom had instructed me to get the documents back, I had

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[3] T refers to the transcript of the DEC hearing on December 6, 2004.

to stay . . . . I sat down and immediately began to write out a narrative of the events . . . ."

Shortly thereafter, the police arrived at respondent's office. In his grievance, Hare stated that, after the police heard his version of the events and after respondent returned to the room, respondent insisted that the police either remove Hare from the property or arrest him for trespass. One of the officers asked respondent to identify the documents that he had taken. Respondent did so. Hare had not seen which documents respondent had removed, because respondent was in another room at the time. Hare testified that such documents included a corporate resolution, the deed, and the affidavit of title.

Hare informed the police that the Zeccardis had left respondent's office to go to Middletown to obtain respondent's $750 fee and would be returning to retrieve the closing documents. When the police asked respondent if he would deliver the closing documents upon receipt of the $750 fee, he replied that he would have to discuss the matter with his client because he considered the Zeccardis' failure to bring the $750 check as a breach of contract.

The officers then escorted Hare outside and "sent [him] on [his] way."

That same day, the Zeccardis tendered the additional legal fee, whereupon respondent returned the closing documents.[4] Hare then filed a grievance against respondent.[5] In his reply to the grievance, respondent offered his opinion on Hare's behavior at the closing:

> I asked, since the checks that had been tendered at the closing were not sufficient, and had been returned to him, that Mr. Hare return the closing documents. He refused. He then secured the closing documents that were on top of his file with a rubber band.
> After I observed this, I reiterated my request for a return of the closing documents which were on top of his file, but now under the rubber bank [sic]. He again refused! At that point it was obvious that he was aware that his clients would lose the entire deposit, if the closing was not concluded and that he wished to retain those documents and use extortion in order to force me into accepting a post dated personal check from the buyers. In my opinion that conduct is a theft that is prohibited by the criminal laws of the State of New Jersey.
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> [RG2.]

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[4] At the DEC hearing, respondent stated that the Zeccardis were still short by "a dollar 30." He then suggested to their courier: "Why don't you lay a dollar and something out of your pocket, I'll give you a receipt and then we can close 'cause my clients still want the exact figure."

[5] The investigative report states that "Mr. Neff's attorney reached out unsuccessfully to Mr. Hare to seek a reconciliation of this matter." The record is silent as to what was proposed by way of "reconciliation." Once a grievance is filed, it may not be withdrawn, even if the parties subsequently resolve their differences.

> I also had a paralegal remain in the room with Mr. Hare while awaiting the arrival of the Brick Township Police Department since there are other valuable papers and files of other clients on the conference table on which the closing should have occurred. Mr. Hare by refusing to return the seller's closing documents and to attempt to extort a less than satisfactory closing by retaining them, demonstrated his unworthiness and lack of integrity.
>
> [RG3.]

Respondent considered filing criminal charges against Hare:

> I must admit that my staff and I were so shocked and incensed by his behavior, I seriously considered the filing of criminal charges. However, I decided not to do so since Mr. Hare may have had a "bad day" for reasons of which I was unaware. As I reflected further, I felt that the filing of a criminal complaint would be too drastic a remedy even though the behavior was improper and even though he had been a defiant trespasser. I may now reconsider that decision.
>
> . . . .
>
> Since the behavior of Mr. Hare simply cannot be condoned by anyone reviewing this matter, I am in the process of filing ethics charges against him.
>
> [RG3.]

At the ethics hearing, respondent recounted the events that occurred at the closing:

> I didn't want this thing to disintegrate into something further, and [Hare] just continued to refuse [to return the closing documents].

So at that point I made a decision and I said we, I just took his file because I will tell you right now, at that – those documents, the deed, the affidavit of title and 1099 were not inside his file, I assure you of that. They were on top of the file and he took it from the rubber band and put it around it.
I said, you have the checks back, I'd like my documents back, which he still refused. I picked up the file and then went into the other room because I didn't want to be there and have some type of altercation arise between the two of us.
It just wasn't a good closing and he could come back at any time, any particular time when they had the money and then I'd have to pass it by my clients. Those are my instructions on all of these things.

. . . .

[A]ll I wanted to do at that point was get the documents back and give him his file back.
I had no reason nor desire to look inside his file to take anything . . . .

(T122-14 to T123-19.)

Respondent testified that he removed the deed, the affidavit of title, and a corporate resolution, which took him "[l]ess than 30 seconds." In his opinion,

> [Hare] did not have a legal right to the documents. What I mean by that is that tender of performance wasn't sufficient. Since it wasn't sufficient, he didn't have the right to retain the documents.
> This was not a dry closing. This was a closing. When he didn't perform, he was in breach of contract and I was entitled to the documents back.

> What I mean by that, he was holding onto them deliberately to try and force some type of settlement. That's what I meant by [the use of the word "extortion" in my letter to the DEC].
>
> (T134-13 to 34.)

Respondent admitted that he had exercised "self-help repossession" of documents that had already been tendered at the closing, but maintained that he had a right to the documents:

> Q. So using your logic, you have the right to take the deed and affidavit of title, which were again, your words, on top of the file, correct?
> A. Yes. But had I done that, I think we would have gotten into a tug of war with him pulling at the file and me pulling at the file. I didn't think that was appropriate.
> Q. So instead you won the tug of war by taking the file out of the room?
> A. Well, of course. I had to use self thought [sic] to take the documents back, yes. He was in breach of contract. That's my opinion. That's why I did what I did.
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> (T161-14 to T162-1.)
>
> A. Because I thought we would get into a tug of war and if I wanted to do that and tried to yank [the documents] out, I'm not sure I'd have gotten them out and I think he had more than one rubber band around it, I think he had two.
>
> (T188-9 to 13.)

Respondent denied that he threw the file on the table: "I came over here and basically put [the file] down. I mean, I didn't flip it. I certainly didn't do that." Respondent's

paralegal corroborated respondent's testimony in this regard. She stated that respondent had "placed the file back on the table", as opposed to throwing it on the table.

Asked if there had been "any yelling out loud by you or Mr. Hare," respondent replied:

> I think what happened is after he got the file back and it was clear that we weren't going to close, that he said something about calling the police and so forth and so on. At that point I said okay, I'll save you the trouble, I'll call the police and then – and I said I'm going to ask --
> You know, at this point there's no point in arguing or bickering back and forth, it wasn't productive and I didn't think it was professional, frankly and --
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> (T124-16 to 25.)

Respondent testified that, at that point, he felt that Hare was a "defiant trespasser."

Respondent admitted that he had other options to collect his $750 fee. At the DEC hearing, the following exchange took place between the presenter and respondent:

> Q. Besides taking Mr. Hare's file, you had a lot of other options, isn't that true?
> A. In what regard?
> Q. Collecting your $750. You had a lot of other options besides taking another man's file, correct?
> A. I suppose I could have sued him, yes.
> Q. You could have sued for the fees, correct?
> A. Yes.
> Q. You could have let him walk out of the office with the documents, file an

application with the court to resolve the recovering of those documents, correct?
A. That would not be –
Q. I'm asking you could you have done it?
A. It would be –
Q. Sir, I'm asking the question, I'm redirecting. Now, you've been doing closings for almost as long as I'm alive.[6]
A. The answer is yes, I could have done that but it would not have been practical –
Q. Could have?
A. The documents would have been filed long before I had a chance to get an injunction.
Q. Could have done that, you agree with me?
A. Theoretically, I could have, yes.
Q. You could have taken a postdated check, another option, correct?
A. I could have taken it, yes.
Q. Could have gone through a procedure so-called dry closing or partially dry closing, isn't that true?
A. That's true also.
Q. You've done that in your 15, or 20,000 closings? I'm sure you've had to do that from time to time.
A. Yes, I didn't think of it at the time, to be candid with you.

(T127-6 to T128-21.)

Respondent admitted that, in retrospect, he should have chosen a different alternative to resolve the dispute, such as a "dry closing": "I would have tried to have a dry closing in which we had an agreement in place that he -- typewritten or handwritten, that he would hold the documents and I would hold the checks but I didn't have authority to do that."

[6] Respondent testified that, in thirty-seven years, he handled fifteen to twenty thousand closings.

Under questioning by the presenter, respondent acknowledged that the $750 figure was not listed on the RESPA statement, which, as previously stated, had been prepared by Hare:

> Q. The $750 didn't show up on the final HUD statement, isn't that true?
> A. To the best of my recollection, that's so.
> Q. And that was reviewed by yourself?
> A. No, I didn't review that.
> Q. Didn't review it?
> A. No.
> Q. You didn't sign off on the HUD statement on behalf of the seller at the closing?
> A. I don't think that that statement was signed at that point in time, the HUD.
> Q. Is that your normal procedure, that the seller would not sign the HUD and closing statement?
> A. That's correct. I sign off on that.
> Q. I'm sorry, I asked you if it was your normal procedure that you said seller's attorney would sign the HUD closing statement at closing, normally?
> A. Yeah. With this client, yes, I would sign the HUD, the HUD statement if I was served with it.
> Q. Okay, in this instance, did someone else sign it on behalf of the seller?
> A. I don't believe so. I believe -- I'm not sure, so I don't want to lie. I'm not sure whether [the paralegal] signed it. Usually I did. Usually that was brought in and I would sign off because she can't sign my name.
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> (T129-4 to T130-8.)

When the paralegal was asked who had signed the RESPA statement on behalf of the seller, she replied that respondent had signed it. She testified that it had been prepared by Hare's office and that, at the closing she had "signed off" on it:

"knowing the way I did the closings, I probably did sign off on [the RESPA statement]." Indeed, respondent testified that he had not reviewed the RESPA statement:

> [Q.] And in this [closing] the deed, affidavit of consideration, resolution and the RESPA were handed over by Rose to Mr. Hare?
> [A.] I don't know what she did. I only know as to what she testified that she did. I don't -- at this point, I'm not sure who's behind the RESPA because I didn't look at it but I know that the deed, the affidavit of title and the resolution were over there. I'm not sure at that point whether or not that RESPA was signed and I honestly tell you that . . . .
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> (T184-3 to 13.)

In addition, Respondent admitted to the panel chair that sometimes his paralegal signed RESPA statements:

> [Panel Chair]: And who would have signed the RESPA on behalf of the seller? I mean your paralegal couldn't sign it.
> [Respondent]: The seller's RESPA, sometimes I sign it, sometimes she signs it. Usually what happens is she brings them in at some point in time, I sign off on them. So you know, it happens at different times depending on how busy we are, so I can't precisely tell you, madam chairman, I signed it at this point in time, that point in time, another point in time, but I have to witness the signatures and so forth and so on.
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> (T185-6 to 17.)

Not only did respondent allow his paralegal to sign RESPA statements in his or his clients' place, but he also did not supervise her preparation of at least one of the Zeccardi closing documents. For instance, when queried by the presenter on the existence of the seller's closing statement in the Zeccardi transaction, respondent admitted that he had delegated its preparation to the paralegal, with no supervision on his part:

> Q. Do you believe that that exists, that seller's closing statement?
> A. I assume it does. Miss Novozinsky was in charge of it.
>
> . . . .
>
> Q. Sir, are you relying upon this committee accepting that there was a document which came from your office to Mr. Hare's office which laid out the seller's closing costs which should be added to the HUD?
> A. I'm relying on what Miss Novozinsky testified to because I didn't take part in that. I didn't supervise that. That's what she did, so I assume that what she did was accurate. I don't feel that she lied about that.
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> (T159-18 to T161-1.)

The complaint alleged that respondent violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) by removing documents from the Zeccardis' file; RPC 3.4(g) (presenting or threatening to present criminal charges to obtain

an unfair advantage in a civil matter) by calling the police; RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) by failing to treat the participants in the closing with courtesy and acting outside the bounds of acceptable practice (more properly a violation of RPC 3.2); and RPC 1.6 (breaching confidentiality of information relating to a client), as well as RPC 1.15 (failing to safeguard property of client or another) by removing the file from another attorney and removing documents from a file of another attorney.

The DEC found that respondent engaged in conduct prejudicial to the administration of justice (RPC 8.4(d))

> by intentionally taking the file of another attorney, removing that file from the room in which the closing was taking place and leaving the room in order to remove documents from the file of another attorney which he clearly knew, or should have known was not permitted and/or authorized, nor was he privileged to do so.
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> (THPR6-20 to THPR7-2.)[7]

The DEC found, in aggravation, that respondent was

> less than candid in his failure to admit that his behavior was abominable and reprehensible and that his behavior served only to aggravate an already uncomfortable situation in the presence of clients and would only serve to affect the manner in which the legal profession is perceived.
>
> (THPR7-5 to 11.)

[7] THPR refers to the transcript of the hearing panel report.

The DEC found that the remaining charges (RPC 8.4(b), RPC 1.6, and RPC 1.15) were not proven by clear and convincing evidence.

The DEC recommended an admonition.

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. We are unable to agree, however, that respondent's ethics offenses merit only an admonition. For the reasons expressed below, we determine that a censure more appropriately addresses the nature of respondent's misconduct.

As stated in the factual recitation, after the Zeccardis failed to comply with a time-of-the-essence letter, respondent deemed their $21,294 deposit forfeited as liquidated damages, presumably under a clause in the contract of sale. Through negotiations between respondent and DiChiara, however, the deal was reinstated: the seller agreed to retain only one-half of the deposit ($10,600), and the Zeccardis agreed to pay respondent an extra $750 fee and close title on or before July 25, 2003.[8]

On the closing date, July 28, 2003, the Zeccardis were represented by another attorney from DiChiara's office, Hare,

[8] July 25, 2003 was a Friday. The closing took place on Monday, July 28, 2003. Respondent must not have considered this one-day delay as a breach of contract; he was ready and willing to proceed with the closing on July 28, 2003.

who was not familiar with all the negotiations that took place between the parties. Hare testified that, although he knew that an "$11,000 penalty" had been imposed on the Zeccardis, he was not aware of the Zeccardis' agreement to pay respondent an extra $750 fee. Therefore, when respondent's paralegal asked for that payment, Hare turned to the Zeccardis, who apparently believed that the $750 was part of the $10,600 liquidated damages. Not having the funds in their possession, the Zeccardis proposed to write respondent a post-dated check for two days later (Wednesday), confident that, in the interim, they would be able to obtain the money from friends or relatives. Indeed, that same afternoon, they returned with the $750 payment.

Respondent rejected that offer and demanded that Hare return the closing documents, which, at that juncture, had already been delivered to Hare and had been placed in the Zeccardi file. According to respondent, Hare did not comply with his demand. While Hare was on the phone consulting with DiChiara, respondent grabbed the entire file from the conference table and went into the next room. Through a glass panel, Hare observed that respondent was removing some documents from the file. Hare told respondent that he could be arrested for stealing Hare's file and demanded the immediate return of the documents. Respondent refused and ordered Hare out of the

office, threatening to notify the police that Hare was trespassing. Respondent refused to identify the documents that he had taken from the file and did so only when instructed by the police.

As noted above, that same afternoon the Zeccardis came back with the $750 check, whereupon respondent returned the closing documents taken from their file.

Respondent's conduct in seizing a file belonging to another attorney and his clients, aside from being extremely unprofessional, was wrongful, unethical, and possibly criminal. Unquestionably, he had no authority to retrieve papers from the file or even touch it. That he believed that, despite the lack of authority, he had the right to the return of the documents because the Zeccardis had breached their agreement did not in any way entitle him to exercise self-help. If he had a conviction that the transaction had been nullified by the Zeccardis' failure to pay his additional legal fee, and if the other party held a contrary belief, his recourse was to seek relief through the courts. Instead, he appropriated property of another -- a file that very well could have contained confidential information -- refused to return the improperly-taken documents, ordered Hare out of his office under penalty of trespass, and summoned the police to either eject or arrest

Hare. The Zeccardis had the misfortune to witness respondent's sorry display of unsuitable behavior.

Moreover, it is not crystal clear that respondent's alleged belief that he was entitled to the documents on a breach-of-contract theory was reasonable. Only after the execution of the deed and its delivery to the buyers was the $750 issue raised. By that time, the transaction might have been legally completed. At a minimum, the Zeccardis had substantially complied with the terms and conditions of the sale. Therefore, respondent, at the time a practitioner of more than thirty-five years who had handled approximately 20,000 closings, could not have reasonably believed that he was unconditionally entitled to the return of the documents because of the non-satisfaction of a condition that might not even have been material to the transaction.

All in all, respondent's conduct was, as the DEC properly characterized, abominable. Without a clear right, he unilaterally aborted the transaction; without authority from the file's rightful owners, he seized the entire file, removed it from their presence, and extracted some documents from it; he then refused to identify those documents and to return them to the buyers' attorney; he threatened the attorney with criminal prosecution and, when faced with the attorney's refusal to leave the office building without his clients' records, called the

police on a complaint for trespass. An inference may be raised that respondent's purpose in threatening criminal prosecution was to coerce Hare into agreeing and acknowledging that the transaction had been nullified by the Zeccardis' failure to pay his extra fee. Because that issue, if not resolved by the parties themselves, was for the courts to decide, it could be reasonably inferred that respondent's purpose in threatening criminal prosecution was to obtain an improper advantage in the transaction.

Moreover, respondent's showing of unprofessionalism, which occurred in the presence of the Zeccardis, was the sort of behavior that places an unfortunate blemish on the image of the profession. As the DEC observed, respondent's conduct "served only to aggravate an already uncomfortable situation in the presence of clients and would only serve to adversely affect the manner in which the legal profession is perceived." Incongruously, respondent contended that he opted for self-help because he wanted to avoid an "altercation" with Hare, "a tug of war with him pulling at the file and me pulling at the file," and "back and forth bickering." Respondent considered such conduct "inappropriate," "unproductive," and "unprofessional." Instead, he resorted to appropriation of a colleague's and the colleague's clients' property, conduct that was entirely

incompatible with the norms of the legal profession and the judicial system as a whole. In the process, he interfered with another attorney's duty to safeguard clients' property and protect whatever confidentiality other documents in the file might command.

One more point warrants mention. Although respondent was not charged with aiding his paralegal in the unauthorized practice of law and with failure to supervise the paralegal, the record demonstrates that he improperly delegated certain responsibilities to her, such as the unsupervised preparation of closing documents and the signing of RESPA statements. We find, thus, that such conduct constituted aggravating circumstances.[9]

We find that respondent's conduct violated RPC 3.4(g) (presenting or threatening to present criminal charges to obtain an improper advantage in a civil matter) and RPC 3.2 (failing to treat with courtesy and consideration all persons involved in the legal process). Respondent is spared a finding that his conduct constituted theft, and therefore, a violation of RPC 8.4(b) (criminal conduct that adversely reflects on the attorney's honesty, trustworthiness or fitness as a lawyer), only because there is no clear and convincing evidence that he

[9] Had respondent been present at the closing or even reviewed the RESPA statement, he would have discovered that the $750 fee was not listed on it, and this problem could have been addressed -- and hopefully resolved -- at the beginning of the closing.

took the documents knowing that he had no entitlement to them. More simply stated, the evidence does not clearly and convincingly establish that respondent knew that his conduct amounted to theft.

We dismiss, however, the finding that respondent violated RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). That rule more specifically addresses conduct that takes place during the course of a proceeding or an adjudication of claims by a court or other tribunal. Similarly, we find that RPC 1.6 (breach of client confidentiality) and RPC 1.5 (failure to safekeep property of client or third party) are inapplicable to this matter. Those rules are directed at conduct toward an attorney's own clients or other individuals to whom the attorney owes a fiduciary duty.

Aggravating circumstances abound here. This is not respondent's first brush with the disciplinary system. In 1987, he was privately reprimanded for engaging in a conflict of interest. There, respondent put his own financial interests above those of his client by acquiring the client's property through assignment and foreclosure, rather than by paying the quoted purchase price. Here, too, respondent was more motivated by self-gain -- the collection of a $750 fee -- than by his duty or desire to promote his client's interests. Other aggravating

factors are respondent's improper delegation of duties to the paralegal, his failure to supervise her, his steadfast refusal to acknowledge any wrongdoing, his unwarranted accusations that Hare was guilty of theft and extortion, and his threat, after Hare filed an ethics grievance against him, to reconsider a prior decision not to file criminal charges against Hare.

Threatening to present or presenting criminal charges to obtain an improper advantage in a civil matter leads to discipline ranging from an admonition to a suspension, depending on the severity of the conduct. See, e.g., In the Matter of Mitchell J. Kassoff, DRB 96-182 (1996) (admonition for attorney who, after being involved in a car accident, sent a letter to the other driver indicating his intent to file a criminal complaint against him for assault; the letter was sent the same day that the attorney received a letter from the other driver's insurance company denying his damage claim); In the Matter of Christopher Howard, DRB 95-215 (1995) (admonition for attorney who, during the representation of one shareholder of a corporation, sent a letter to another shareholder threatening to file a criminal complaint for unlawful conversion if he did not return the client's personal property); In re Hutchins, 177 N.J. 520 (2003) (reprimand for attorney who, in attempting to collect a debt on behalf of a client, told the debtor that he had no

alternative but to recommend to his client that civil and criminal remedies be pursued); In re McDermott, 142 N.J. 634 (1995) (reprimand for attorney who filed criminal charges for theft of services against a client and her parents after the client stopped payment on a check for legal fees); In re Dworkin, 16 N.J. 455 (1954) (one-year suspension for attorney who wrote a letter threatening criminal prosecution against an individual who forged an endorsement on a government check, unless the individual paid the amount of the claim against him and the legal fee that the attorney ordinarily charged in a criminal matter "of this type;" the Court found that the attorney had resorted to "coercive tactics of threatening a criminal action to effect a civil settlement"); and In re Barrett, 88 N.J. 450 (1982) (three-year suspension for serious acts of misconduct that included the filing of a criminal complaint with the purpose of coercing a party into reaching a civil settlement).

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline: from an admonition to disbarment. See, e.g., In the Matter of Alfred Sanderson, DRB 01-412 (2002) (admonition for attorney who, in the course of representing a client charged with DWI, made discourteous and disrespectful communications to the municipal

court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter went on to say, "It is not lost on me that in 1996 your little court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); In the Matter of John J. Novak, DRB 96-094 (1996) (admonition imposed on attorney who engaged in a verbal exchange with a judge's secretary; the attorney stipulated that the exchange involved "loud, verbally aggressive, improper and obnoxious language" on his part); In re Geller, 177 N.J. 505 (2003) (reprimand imposed on attorney who filed baseless motions accusing two judges of bias against him; failed to expedite litigation and to treat with courtesy judges (characterizing one judge's orders as "horseshit," and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"), his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"), and an unrelated litigant (the attorney asked the judge if he had ordered "that character who was in the courtroom this morning to see a psychologist"); failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a

judge; used means intended to delay, embarrass or burden third parties; made serious charges against two judges without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court "Fraud in Freehold"; in mitigation, the attorney's conduct occurred in the course of his own child-custody case, the attorney had an unblemished twenty-two-year career, was held in high regard personally and professionally, was involved in legal and community activities, and taught business law); In re Milita, 177 N.J. 1 (2003) (reprimand for attorney who wrote an insulting letter to his client's former paramour – the complaining witness in a criminal matter involving the client; an aggravating factor was the attorney's prior six-month suspension for misconduct in criminal pretrial negotiations and for his method in obtaining information to assist a client); In re Lekas, 136 N.J. 515 (1994) (reprimand imposed on attorney who, while the judge was conducting a trial unrelated to her client's matter, sought to withdraw from the client's representation; when the judge informed her of the correct procedure to follow and asked her to leave the courtroom because he was conducting a trial, the attorney refused; the judge repeatedly asked her to leave because she was interrupting the trial by pacing in front of the bench during the trial; ultimately, the attorney had to be

escorted out of the courtroom by a police officer; the attorney struggled against the officer, grabbing onto the seats as she was being led from the room); In re Stanley, 102 N.J. 244 (1986) (reprimand for attorney who engaged in shouting and other discourteous behavior toward the court in three separate cases; the attorney's "language, constant interruptions, arrogance, retorts to rulings displayed a contumacious lack of respect. It is no excuse that the trial judge may have been in error in his rulings."); In re Mezzacca, 67 N.J. 387 (1975) (reprimand imposed on attorney who referred to a departmental review committee as a "kangaroo court" and made other discourteous comments); In re Vincenti, 114 N.J. 275 (1989) (three-month suspension for attorney who challenged opposing counsel and a witness to fight, used profane, loud and abusive language toward his adversary and an opposing witness, called a judge's law clerk "incompetent," used a racial innuendo at least once, and called a deputy attorney general a vulgar name); In re Vincenti, 92 N.J. 591 (1983) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's

chest and bumping the attorney with his stomach and then his shoulder); In re Vincenti, 152 N.J. 253 (1998) (disbarment for attorney described by the Court as an "arrogant bully," "ethically bankrupt," and a "renegade attorney;" this was the attorney's fifth encounter with the disciplinary system).

In a very recent case, In re Gahles, 182 N.J. 311 (2005), we believed that a reprimand was appropriate, but the Court downgraded the discipline to an admonition. There, in the course of oral argument on a motion in a matrimonial matter, the attorney exhibited rude behavior toward the opposing party (her client's wife) by calling her a "con artist," "crazy," a "liar," and a "fraud." Other improper comments were "this is a person who cries out to be assaulted," and "somebody has to, like, put her in jail or put her in the loony bin." In mitigation, we considered (1) that the attorney's conduct, although reproachable, was not intended to abuse or intimidate the opposing party, but to apprise the new judge in the case – who was unfamiliar with the case history – of what the attorney perceived to be that party's abnormal and defiant behavior throughout the lengthy, contentious matrimonial matter; (2) that the attorney's statements were made in the heat of oral argument on a motion that involved crucial issues; and (3) that the

attorney's exaggerated reactions may have been prompted by memories of her own, difficult divorce case.

Unlike this respondent, Gahles did not present or threaten to present criminal charges to obtain an improper advantage in the matter. Moreover, none of the mitigating factors found in Gahles are present here. In fact, the record reveals no mitigation at all -- only aggravating circumstances. Therefore, respondent's conduct warrants more severe discipline than the admonition meted out in Gahles. In light of the severity of respondent's unethical conduct and of the aggravating circumstances present in this case, we find that the appropriate quantum of discipline is a censure.

Members Louis Pashman, Reginald Stanton, and Robert Holmes did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative costs incurred in 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 H. Alton Neff
Docket No. DRB 05-124

Argued: July 21, 2005

Decided: August 31, 2005

Disposition: Censure

Members	Suspension	Censure	Admonition	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan		X			
Holmes					X
Lolla		X			
Neuwirth		X			
Pashman					X
Stanton					X
Wissinger		X			
Total:		6			3

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel