SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NOS. DRB 00-118 and 00-119

IN THE MATTER OF

ROBERT S. MILLER

AN ATTORNEY AT LAW

Decision

IN THE MATTER OF

JEFFREY I. BRONSON

AN ATTORNEY AT LAW

Argued: September 21, 2000

Decided: March 26, 2001

Mark Denbeaux appeared on behalf of the District VA Ethics Committee.

Henry N. Luther, III appeared on behalf of respondent Miller.

Michael Ambrosio appeared on behalf of respondent Bronson.

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

These matters were before us based on a recommendation for discipline (reprimand) filed by the District VA Ethics Committee ("DEC") as to respondent Miller and a recommendation for an admonition as to respondent Bronson, arising out of their representation of two defendants in a criminal proceeding. The matters were considered simultaneously by the DEC at a combined hearing. The complaint filed against Miller charged him with a violation of RPC 1.4(a) and (b) (failure to communicate), RPC 1.5(b) (failure to provide a written fee agreement), RPC 1.7(a),(b) and (c)(2) (conflict of interest), RPC 1.16(a) (failure to withdraw from representation), RPC 4.2 (communication with a person represented by counsel) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and (d) (conduct prejudicial to the administration of justice).

A separate complaint charged Bronson with a violation of RPC 8.3(a) (failure to report professional misconduct by another attorney), RPC 8.4(a) (assisting another to violate the Rules of Professional Conduct, mistakenly cited as RPC 8.3(a)) and RPC 8.4(d).

Miller was admitted to the New Jersey bar in 1964. He no longer maintains an office in New Jersey. He is retired from the practice of law and currently lives in North Carolina.

On October 1, 1985 Miller was publicly reprimanded for improperly entering into a business transaction with a client, failing to act with diligence in an estate matter and withdrawing legal fees from estate funds without the prior consent of his client. In re Miller, 100 N.J. 537 (1985). By letter dated November 22, 1995 he was admonished for lack of diligence and failure to communicate in a domestic relations matter. In the Matter of Robert

S. Miller, Docket No. DRB 95-307. On March 1, 1999, he was temporarily suspended for failing to pay administrative costs assessed in connection with the above admonition. He was restored to practice on April 6, 1999.

Bronson was admitted to the New Jersey bar in 1982. He practices law in East Orange, Essex County. He has no history of discipline.

* * *

On December 17, 1996 John Egnatowicz, Bryant Woods and two other individuals were arrested and charged with the murder of an individual in Ocean County. All of the defendants entered plea agreements. Woods, who was the "shooter," entered a guilty plea to felony murder. He was a juvenile at the time of the incident, but was prosecuted as an adult. He was represented by a public defender in connection with the plea agreement, which exposed him to a maximum sentence of thirty years in prison.

Co-defendant Egnatowicz, an adult, participated in planning the robbery and was present at the scene, but was outside when the shooting took place. He entered a guilty plea to aggravated manslaughter. Egnatowicz was represented by a "pool attorney" in connection with a plea agreement that exposed him to a maximum term of thirty years in prison.[1]

In their plea agreements, entered on March 10 and September 8, 1997 respectively, Woods and Egnatowicz admitted their involvement in the crime. Both had given statements

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[1]Both Woods and Egnatowicz had appointed counsel. A pool attorney was appointed to represent Egnatowicz because the Office of the Public Defender would have a conflict of interest if it represented both defendants.

to the police in which they incriminated themselves, each other and the other defendants. The judge (who later referred this matter to the Office of Attorney Ethics), set October 31, 1997 as the sentencing date for Woods and Egnatowicz.

At the DEC hearing, the presenter and the attorneys for both respondents stipulated that (1) "[i]t is possible that if the pleas had been vacated and neither of the defendants had gone to trial that they might have received more severe penalties than the plea that they had as of October 31" and (2) "there were different degrees of culpability between the two people creating an inability for one lawyer to represent the two defendants."

In April 1997, Debra Peterson, Woods' mother, met with Miller and asked him to review the plea agreement. Although there was no question of Woods' guilt, Miller initially thought that the sentence was as severe as Woods would have received, had he gone to trial and been convicted. Miller, therefore, agreed to attempt to set aside the plea agreement. Peterson paid respondent $2,500 on April 14, 1997. There was no written fee agreement.

Both Peterson and Woods testified that Miller did not discuss with them the possible adverse consequences of withdrawing the plea agreement, such as the imposition of a more severe penalty resulting from trial and conviction. Indeed, Peterson testified that Miller assured her that he could secure a less severe sentence for Woods. Miller testified to the contrary, stating that, as an experienced attorney, he knew better than to make such a promise.

Between mid-April and early May 1997, Miller and Woods' appointed counsel

exchanged a series of letters. Essentially, Miller told counsel that, although he was not entering an appearance in Woods' case, he had been retained by Peterson to review the charges and plea and he wanted to review the discovery in the case. Woods' appointed counsel did not want Miller to meet with Woods and refused to give Miller a copy of the discovery. Miller's position was that he did not need a substitution of attorney to review the discovery and to meet with Woods and that he intended to do so after obtaining Woods' written authorization. Miller sought the advice of a certified criminal trial attorney who was a former public defender, who told him that, with Woods' written consent, it was not necessary for him to file a substitution of attorney.

On May 5 and 6, 1997 Woods and Peterson signed an authorization for Miller to meet with Woods and to review the discovery. Miller did not meet with Woods for some time. Miller had been involved in an automobile accident on March 26, 1997 and, after surgery in June 1997, spent several months recuperating in North Carolina. In September 1997 Miller returned to New Jersey and met with Woods. The record does not reveal whether Miller ever reviewed the discovery.

* * *

On October 11, 1997, twenty days before the scheduled date for sentencing, Egnatowicz's mother, Sharon Gilchist, met with Miller to ask him to review Egnatowicz's case and determine if anything could be done to secure a less stringent sentence. Miller thought that the plea agreement was "horrendous." It appears, however, that Miller did not

explain to either Egnatowicz or Gilchist the consequences of revoking the plea agreement. According to Gilchist, Miller stated that Egnatowicz had nothing to lose if the plea agreement were revoked because, if he were convicted, he would receive a thirty-year sentence anyway. Gilchist added that Miller promised to get Egnatowicz "five years flat." Egnatowicz, too, testified that Miller did not tell him that he could get a more severe sentence and, in fact, said that he could get Egnatowicz "maybe 15 flat or ten years." Miller, in turn, denied making promises to Gilchist or Egnatowicz, although he admitted that he may have made references to Egnatowicz about "the 10 or 15 flat."

Miller requested a $5,000 retainer from Gilchist, which she paid. He did not provide her with a written fee agreement.

During his consultation with Gilchist, Miller disclosed to her that he had been approached about representing Woods in vacating the plea agreement. Gilchist's and Miller's testimony about the balance of that conversation is at odds. According to Gilchist, after further discussion Miller stated that he would represent Egnatowicz and would advise Egnatowicz's appointed counsel of the representation. Miller, in turn, testified that he initially told Gilchist that Egnatowicz required separate representation; upon Gilchist's urging, however, he had agreed to see if he could represent Egnatowicz and find another attorney for Woods.

Ultimately, Miller concluded that he had to continue to represent Woods in the plea agreement revocation. Miller testified that he told Gilchist that he intended to find other

counsel for Egnatowicz, but did not recall mentioning the name of this other attorney.

As to the conflict of interest issue in connection with his representation of both Woods and Egnatowicz in the revocation of their plea agreements, Miller claimed that, although it would have been improper for him to argue both motions, there was nothing impermissible about his drafting the motions because the sole issue in both motions was the severity of the plea bargain; therefore, he believed that he could meet with Woods and Egnatowicz and prepare both applications. To that end, Miller met twice with Egnatowicz, on October 16 and 28, 1997. On the second date, he gave Egnatowicz a certification in support of his motion to withdraw the plea, which Egnatowicz signed. The certification named Bronson as Egnatowicz's attorney. According to Miller, he told Egnatowicz that Bronson was representing him and that he, Miller, was representing Woods. Egnatowicz did not recall reading Bronson's name on the certification.

When Miller was rendering legal advice to Egnatowicz and preparing the motion in his behalf, he continued to advise Woods and prepare the application in his behalf. On October 28, 1997 Miller met with Woods and obtained his signature on a certification in support of his motion to withdraw his plea and plea agreement. Miller did not file a substitution of attorney for either defendant because he thought it was unnecessary at that time. Miller stated that, if the motion were granted, he would ask the court to be appointed attorney of record.

* * *

On or about October 28, 1997 Miller discussed with Bronson the latter's possible representation of Egnatowicz. Bronson was employed at a law firm with which Miller had had an informal relationship for a number of years. Miller told Bronson that there was a conflict of interest between Egnatowicz and Woods and that Egnatowicz needed separate counsel. Miller assured Bronson that he had Egnatowicz's and Gilchist's authorization to retain Bronson. Miller further advised Bronson that he was preparing papers in support of applications for both men to withdraw their pleas.

Bronson accepted the representation of Egnatowicz, for which he did not request or receive any payment. According to Bronson's testimony, he did not think that Miller would prevail on the motion and thought that little would come of the matter. Despite Bronson's stated intent to meet with Egnatowicz "as soon as possible," he did not communicate with Egnatowicz or Gilchist. Bronson did not file a substitution of attorney or enter an appearance, pursuant to R.3:8-1.

On or about October 29, 1997 Miller advised Bronson that he had prepared motion papers in Egnatowicz's behalf, which would be signed by Bronson and filed.[2] Bronson, however, was unable to meet with Miller to review the papers, primarily because of his young child's serious orthopedic surgery. Therefore, after Miller and Bronson briefly discussed the contents of the motion papers, Bronson authorized Miller to sign his name to

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[2]This is the chronology of events found by the DEC. Bronson's testimony, however, appears to merge the calls of October 28 and October 29, 1997 into one, with a preliminary call earlier in October, during which Miller first mentioned that he might need Bronson's assistance.

the notice of motion and file it with the court. Because Miller had a longstanding relationship with Bronson's law firm, Miller had the firm's letterhead in his possession, which he used to draft the motion.

Bronson testified as follows about his opinion of Miller's character and about his desire to assist him in this matter:

> A: Well, I knew Bob was a man of deep religious conviction because he had undergone some kind of religious conversion in his life. And initially Bob was Jewish and I'm from a Jewish background, but Bob had taken up with Christianity, I guess Pentecostal, or some form of Christianity and left Messianic Christianity. So I believe Bob to be – and I still do believe Bob a man of deep religious conviction, and that's what I had – the opinion I have of him.
>
> Q: And you have that opinion of him to this day, do you not?
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> A: I know – I know that Bob has been – had difficulties through the years with his being an attorney. I know that he doesn't stay on top of things as an extremely diligent attorney would, but I know that Bob Miller would never cheat anyone out of anything intentionally.
>
> And I know when he came to me about these two boys as he described them, that he told me that they had gotten a raw deal down in Toms River and that he wanted to help them. And I know it wasn't just about the money despite the picture that's been painted thus far.
>
> I also know that he was in some financial difficulty, but that was a continuing thing for him. I mean, you know, he had been in an accident and I knew about that; and basically when he came to me, I wanted to help him.
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> [T1/10/00 at 182-183]

Miller signed Bronson's name to Egnatowicz's motion. On October 29, 1997 Miller transmitted to the court, in the same federal express envelope, the separate motions he prepared for Woods and Egnatowicz. The court received the motions on October 30, 1997.

Either on October 29 or 30, 1997 Miller asked the court to adjourn the sentencing and the motions to enable counsel to submit briefs and an additional affidavit from Woods' mother, Peterson. The court denied the request. Miller then asked Bronson, on October 30, 1997, to appear in court the following day. Bronson replied that he could not because of an out-of-state medical appointment for his child. Bronson authorized Miller to appear in his behalf to request an adjournment that, Bronson anticipated, the court would grant. At the ethics hearing, Bronson acknowledged that he should have called the court himself.

On the sentencing day, Woods' and Egnatowicz's attorneys of record appeared in court. Miller appeared for Woods as well. He also purported to speak for Bronson, having advised the court of the reason for Bronson's absence.

During the course of the October 31, 1997 proceedings, Miller made the following statements to the court about his and Bronson's representation of the defendants:

> Miller: I don't know if it's proper but [Egnatowicz's] mother, she spoke on the night before the plea with Mr. Archer, and she's given a certification about her position in it and that it leaves a lot, and they retained Mr. Bronson, knowing, well aware of the consequences of going to trial and possibly a higher sentence. They moved to withdraw this plea on the basis of the facts and his mental state, and et cetera.
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> * * *
>
> The Court: What do you propose to do by withdrawing their pleas?
>
> Miller: Once the Court has the opportunity - we want to renegotiate the pleas. If the Prosecutor doesn't, I believe even if they're convicted, once everything is shown before the Court, they wouldn't - they will not get the sentencings [sic] or have anything to lose, you might say, on what they pleaded to.
>
> Now, this isn't my suggestion that I went to them and solicited, this is

the mother went to Mr. Bronson and Bryant Woods' mother came to see me, and these are things that they want, not what I want.

[Exhibit J-12 at 12-16]

At the DEC hearing, Miller testified as follows about the above statements to the court, particularly the portion about Egnatowicz's mother's meeting or discussions with Bronson:

A: Right. It's true to the extent when I'm saying they essentially hired or wanted a lawyer to put – present these facts before the court to withdraw the plea.

* * *

How I phrased it was wrong. It was not true, and it – but it was a mistake. I don't even remember phrasing it that way. Obviously I did, but I didn't mean it that way. I meant they wanted an attorney to come to court and have justice prevail.

Q: An attorney?

A: Yes, sir.

Q: But they didn't know Mr. Bronson?

A: No.

Q: And you also said on page 16: 'Now this isn't my suggestion that I went to them and solicited. This is the mother went to Mr. Bronson, and Bryant Woods's [sic] mother came to see me and these are the things that they want. Not what I want.'

A: Again –

Q: Is that also a mistake?

A: Yes.

Q: So two different times you mistakenly told the court that the family

retained Bronson when they never even had his name and hadn't met him; correct?

A: Right. It had to be a mistake because it would be blatantly ridiculous but, you know, I was trying to impress on the court that these people wanted to have the pleas – the mothers wanted to have the pleas withdrawn.

[T1/10/00 at 156-157]

The court disqualified Miller and Bronson from representing Woods and Egnatowicz because of a conflict of interest and Miller's impropriety in discussing the cases with both defendants without the consent of their respective counsel of record. The court adjourned the sentencing until November 14, 1997 and advised Woods and Egnatowicz, along with their mothers, that they were free to retain other counsel to seek the withdrawal of their pleas.

Both defendants continued to be represented by their appointed counsel and were sentenced on November 14, 1997.

* * *

Woods, Egnatowicz, Peterson and Gilchist all testified before the DEC. Woods testified that, although he knew Miller spoke to Egnatowicz on one occasion at the jail, Miller did not disclose to him that he was representing Egnatowicz.

Similarly, Peterson testified that Miller never told her that he was representing Egnatowicz or arranging for another attorney to represent him. Peterson understood that Miller "could only represent one of them because they were all involved."

Gilchist testified that she was "shocked" when Miller told the court that he represented Woods, because she thought he was representing Egnatowicz and she did not know who

Bronson was. Miller countered that he had not advised Gilchist of Bronson's involvement because he was "hoping that the case would be adjourned. Then [he] would make all the phone calls and do what all had to be done [sic]."

Lastly, Egnatowicz testified that Miller had told Gilchist that he would have an associate represent Egnatowicz. According to Egnatowicz, Gilchist disfavored that arrangement. Miller then stated that he would represent Egnatowicz. Egnatowicz knew Miller had spoken with Woods at the jail and surmised that Miller was representing Woods as well.

At some point after the criminal proceedings, Miller returned Gilchist's $5,000 retainer. In his reply to the grievance, Miller stated that, if the adjournment had been granted, a portion of the retainer would have been given to Bronson to continue the representation; if the motion had been denied, a portion would have been returned to Gilchist.

Peterson also requested a refund of her retainer. She agreed to accept a lesser amount because of Miller's financial difficulties.

* * *

The DEC found that Miller violated RPC 1.7(a), (b) and (c) and RPC 1.16(a) when he (1) undertook the representation of a client, Egnatowicz, whose interests were adverse to those of another client, Woods, and vice-versa, without the required disclosure and consent; (2) represented Egnatowicz when the representation was materially limited by his duty to Woods and vice-versa, without their consent after full disclosure; (3) engaged in the dual

representation of Egnatowicz and Woods without explaining the implications and risks involved and engaged in circumstances involving the appearance of impropriety; and (4) failed to withdraw from the representation when it appeared that the representation would violate the conflict of interest rules.

In the DEC's view, "[t]here can be no doubt that Egnatowicz' interests so differed from those of Woods that the former needed separate counsel." The DEC noted that Miller recognized the conflict. The DEC also noted that there would have been no need to secure Bronson's services, had there been no conflict. The DEC remarked that "[t]he fact that [Miller] made (desultory) efforts to bring another lawyer into the case for Egnatowicz does not permit him to argue that Egnatowicz was separately represented."

The DEC found that, although Miller may have told one or more of the individuals involved that he intended to bring in another attorney for Egnatowicz, it was also clear that he (1) took money from Peterson and Gilchrist; (2) did not advise anyone in writing who he was representing; (3) took insufficient steps to advise the defendants' counsel of record what was taking place; (4) made no effort to acquaint Egnatowicz or Gilchist with Bronson and obtain their consent to his involvement and (5) "having initially created confusion about what he was doing and for whom, [Miller] did not take sufficient steps to eliminate such confusion. As a result, Woods and Egnatowicz (and their respective mothers) were justified in thinking that [Miller] was their lawyer."

The DEC disagreed with Miller's contention that, although Egnatowicz needed

separate counsel for trial, his interests were not in conflict with Woods' as to the applications to withdraw their guilty pleas and, therefore, could engage in the dual representation for that purpose only. The DEC disagreed with respondent's contention that Woods' and Egnatowicz's interests were aligned on the applications, noting that it was in Egnatowicz's interest to emphasize Woods' greater culpability in the crime. Also, the DEC found that Miller's argument was undermined by the fact that he sought other counsel to represent Egnatowicz in connection with the motion. The DEC also noted that dual representation, even for a limited purpose, is permissible only with the consent of both clients after full disclosure. In the DEC's view, "[t]he record is devoid of evidence" that Miller explained the ramifications of the dual representation to Woods or Egnatowicz or their mothers, or secured their consent thereto.

The DEC also concluded that Miller violated RPC 1.4(a)[3] by failing to adequately explain to Woods and Egnatowicz, in a manner sufficient to enable them to make informed decisions, the possible adverse consequences of withdrawing their pleas. The DEC noted that the course of action Miller recommended carried with it the possibility of life sentences, particularly after the prosecutor rejected further plea negotiations at the October 31, 1997 proceeding. In the DEC's view, although Miller might not have assured his clients a better result, he did not adequately explain to them the possibility of a worse result, leaving neither defendant in a position to make an informed choice.

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[3]More properly, section (b).

As to the alleged violation of RPC 8.4(c), the DEC concluded that Miller's representation to the court that Gilchist had sought out Bronson was false and had misled the court about "Bronson's non-existent role in the case." The DEC deemed specious Miller's contention that his statement was inadvertent or unintentionally wrong, noting that he could have corrected his misstatement, had he wanted to do so.

The DEC also found that Miller engaged in conduct prejudicial to the administration of justice, a violation of RPC 8.4(d)[4] by (1) confusing his clients about who he was representing; (2) failing to adequately disclose to them the conflict of interest and its ramifications; (3) failing to adequately advise his clients about the possible adverse consequences of his recommended course of action; (4) failing to advise counsel of record of his actions; (5) failing to take proper steps to appear in the case, to introduce Bronson to his prospective client, to obtain the client's consent to Bronson's representation and to secure Bronson's informed consent to the submission of papers to the court with his name on them and (6) misrepresenting to the court Bronson's role in the case.

Finally, the DEC determined that Miller violated RPC 1.5 by failing to provide to Woods/Peterson and Egnatowicz/Gilchist, in writing, the basis for his fee.

As noted above, the complaint charged Miller with communicating with individuals represented by counsel. When the presenter did not pursue that allegation at the hearing, the DEC deemed it withdrawn.

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[4]Mistakenly cited as RPC 8.4(b).

The DEC recommended that Miller receive a reprimand.

* * *

As to Bronson, the DEC dismissed the charges of a violation of RPC 8.3(a) and RPC 8.4(a). The DEC concluded that, because Bronson did not represent Egnatowicz before October 28, 1997, he did not have prior knowledge that Miller may have violated the RPCs.

The DEC, however, found a violation of RPC 8.4(d) because, among other things, (1)Bronson was never retained by Egnatowicz or Gilchist; (2) he never filed a substitution of attorney or notice of appearance; (3) he was never authorized by Egnatowicz or Gilchist to represent Egnatowicz; (4) he never communicated with Egnatowicz or Gilchist; (5) he authorized Miller to sign his name to documents he never reviewed, in violation of R.1:4-4 and R.1:4-5; (6) he knew that the motion papers Miller prepared in behalf of Egnatowicz were submitted to the court and (7) he knew that the motion papers stated that he was representing Egnatowicz when, in fact, he was not.

The DEC recommended that Bronson receive an admonition.

* * *

Upon a de novo review of the record, we are satisfied that the conclusions of the DEC that respondents' conduct was unethical are fully supported by clear and convincing evidence.

With regard to Bronson, we found that much of his conduct in this matter is excused. Indeed, he agreed to represent Egnatowicz based on Miller's statement that he had

Egnatowicz's authorization to retain his services. Also, his failure to appear on the scheduled sentencing date was excused by his child's illness and his expectation that the court would grant the adjournment. It is also obvious to us that Bronson trusted Miller as an older, more experienced practitioner of "deep religious conviction." We find that Bronson intended to meet with his client prior to the hearing, based on his expectation that the original scheduled date would be adjourned. Bronson, nevertheless, did not speak with his client. He, therefore, had no way of knowing if the information in the certification Egnatowicz signed was correct or formed a proper basis to vacate the plea. Therein lay his misconduct.

As to the specific charges, the DEC's dismissal of the alleged violations of RPC 8.3(a) and RPC 8.4(a) was appropriate. Clearly, although Miller used the term "conflict of interest" when he contacted Bronson about the representation, Bronson did not think that Miller had engaged in misconduct by taking on the representation. Bronson's probable frame of mind at the time was that Miller had contacted him for assistance because Miller realized that he had a conflict of interest. Also, Bronson had no way of knowing the confusion that Miller had created about whom he was representing. Most likely, in Bronson's view, there was no unethical conduct to report or to assist.

As to the alleged violation of RPC 8.4(d), Bronson's misconduct essentially came down to allowing Miller to sign his name to a motion he had not read and allowing it to be filed in behalf of a client with whom he had never spoken. Bronson subjected his client to possible harm and wasted judicial resources as well, by forcing the sentencing hearing to be

adjourned after all parties had appeared.

One additional point about Bronson warrants mention. The investigator assigned to this matter testified that Bronson told her that "he loaned his name to Mr. Miller so Mr. Miller could argue the motions and collect the fees for the motions. . . . He said if however the motions were granted, he fully intended to meet with the defendant and open the file and proceed. But he did not believe that the motions would be granted." T119-120. Bronson testified that, although he might have used those words, he meant only that he authorized the use of his name and did not mean that Miller could use his name to practice law. Bronson testified further that he would not engage in the conduct a second time, a representation that we accepted as true.

* * *

We find that Miller, on the other hand, violated most of the rules with which he was charged. We do not find that he violated RPC 1.4(a): this is not a case where the attorney did not communicate with his clients. Rather, this is a case where the attorney did not provide the clients with sufficient information to make informed decisions about their cases, in violation of RPC 1.4(b). The testimony of the four principal witnesses, Egnatowicz, Woods, Peterson and Gilchist could not be more clear. They were all unaware that, by withdrawing the plea agreements, the defendants could face harsher penalties. In addition, even looking at the evidence in the light most favorable to Miller, although Egnatowicz and Woods apparently knew that Miller had contact with the other, they obviously did not know

that Miller had drafted the motions for both of them and would appear in court at their sentencing hearing, essentially representing both of them. Clearly, thus, Miller violated RPC 1.4(b).

He also violated RPC 1.5(b), when he failed to provide either Gilchist or Peterson with a written fee agreement, a contention that he did not dispute.

As to the charge of a violation of RPC 8.4(d), we agree with the DEC's conclusion that Miller engaged in conduct prejudicial to the administration of justice. His failure to enter an appearance or to apprise appointed counsel of his filing of the motions caused counsel for all defendants to prepare for a hearing that did not take place. In addition, Miller wasted the court's resources by causing the sentencing hearing to be rescheduled.

We also find that the charge of misrepresentation to the court is supported by the record. There is no question that Miller's statement that Egnatowicz's family retained Bronson was untruthful. Indeed, we wonder that Miller could have made a statement like that in the presence of Egnatowicz and his family and not expect them to deny the truth of the statement. Clearly, by making this misrepresentation to the court Miller violated RPC 8.4(c).

As to the conflict of interest issue, Miller was charged with a violation of RPC 1.7(a), (b) and (c)(2). As to his preparation of the motions, Miller argued that his conduct was proper because Woods' and Egnatowicz' interests were common: the withdrawal of their plea agreements. As correctly pointed out by the DEC, however, Woods' and Egnatowicz's

interests were in conflict, since it would benefit Egnatowicz to enhance both Woods' participation in the crime and his degree of culpability. Potentially, too, it might be in Woods' interest to ascribe greater blame to Egnatowicz. In short, Egnatowicz and Woods might well have started pointing fingers at each other, particularly because of the different levels of culpability between Egnatowicz and Woods.

Even assuming that Miller's belief was reasonable, however, both Woods and Egnatowicz had to consent to the dual representation, after full disclosure of the circumstances. Miller did not comply with this requirement. Woods' and Egnatowicz' testimony suggests that any information that they had about the dual representation did not come from Miller, but from their own observations. Moreover, the motions Miller drafted were presented to the defendants for signature three days before the sentencing hearing. Even if they knew about the dual representation, it is possible that, at that time, they believed that they had no choice but to consent to Miller's representation. We found, thus, that Miller violated RPC 1.7 (a), (b) and (c)(2), the latter based on the appearance of impropriety in representing two co-defendants in a murder case.

We dismissed, however, the charge of a violation of RPC1.16(a) (failure to withdraw from representation) because, in this context, the failure to withdraw is part and parcel of the conflict of interest findings. Similarly, we dismissed the allegation that Miller violated RPC 4.2 (communication with a person represented by counsel), which was not pursued at the DEC hearing.

In In re Berkowitz 136 N.J. 134 (1994), a reprimand was imposed where the attorney's client had an interest that was adverse to that of another client also represented by the attorney's law firm, in violation of RPC 1.7(a) and RPC 1.10(a). The other client was represented by another attorney, who himself had an interest in his client's business. The attorney had discussed the conflict of interest rules with a third attorney and contended that there was no conflict as long as there was no lawsuit filed between the two parties. There was no benefit from the fact that both attorneys worked for the same firm. See, also, In re Dugan, 136 N.J. 134 (1994) (companion case to Berkowitz; a reprimand was imposed where the attorney failed to reveal to a different attorney within his firm that he owned a share in the business of his client, who had an adverse interest to the other attorney's client, in violation of RPC 1.7).

In In re Guidone 139 N.J. 272 (1994), a three-month suspension was imposed where the attorney represented the Lions Club of Chester, New Jersey in its sale of a twenty-five-acre tract of land. Shortly before the contract for sale was signed, the attorney acquired a twenty-percent interest in the partnership that purchased the property. For over a year, the attorney represented the Club as seller without disclosing his interest as a purchaser. The Court stated that "[w]e have generally found that in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to the clients involved, a public reprimand constitutes appropriate discipline." Id. at 277.

Here, using the criteria set down in Guidone, a suspension is warranted. Miller made

misleading statements to his clients and to the court. Furthermore, he was responsible for Bronson's troubles in this disciplinary matter and took advantage of their friendship. In addition, Miller has previously been admonished and reprimanded. The reprimand was imposed fifteen years ago and also arose from a conflict of interest situation, albeit between Miller and a client. In addition, the admonition Miller received five years ago sprang from lack of diligence and failure to communicate. It is obvious to us that Miller still has not learned the importance of adequately communicating to his clients the information they need to make informed decisions about their cases.

In light of the foregoing, we unanimously determined to impose a three-month suspension against Miller. One member recused himself. Two members did not participate.

As to Bronson, a four-member majority determined to impose an admonition. One member dissented, voting to impose a reprimand. One member voted to dismiss the matter. One member recused himself. Two members did not participate.

We further required both Bronson and Miller to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 3/26/01

By: _____

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert S. Miller
Docket No. DRB 00-118

Argued: September 21, 2000

Decided: March 26, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson							X
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy						X	
Schwartz							X
Wissinger		X					
Total:		6				1	2

Robyn M. Hill 6/26/01
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey I. Bronson
Docket No. DRB 00-119

Argued: September 21, 2000

Decided: March 26, 2001

Disposition: Admonition

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling				X			
Peterson							X
Boylan				X			
Brody				X			
Lolla				X			
Maudsley					X		
O'Shaughnessy						X	
Schwartz							X
Wissinger			X				
Total:			1	4	1	1	2

Robyn M. Hill 6/26/01
Robyn M. Hill
Chief Counsel