SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-464

IN THE MATTER OF	:
	:
EDWARD BASAMAN	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 13, 2003

Decided: May 20, 2003

Claire Calinda appeared on behalf of the District IIIA Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us based on a recommendation for discipline filed by the District IIIA Ethics Committee ("DEC"). The three-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with client), RPC 3.2 (failure to expedite litigation) and RPC 8.4(c) (conduct involving misrepresentation) in the Presti and Brand matters and RPC 1.4(a), RPC 8.4(c) and RPC 1.6(a) (revealing information relating to the representation) in the Schuldes matter.

Respondent was also charged with a violation of RPC 1.1(b) (pattern of neglect), when the three matters were considered in concert.

Respondent was admitted to the New Jersey bar in 1991. He has no history of discipline. As of the date of the DEC hearing (October 16, 2002), he was engaged in the practice of law in Lakehurst, Ocean County. He has since relocated his practice to West New York, Hudson County.

The Presti Matter (District Docket No. IIIA-00-035E)

On April 22, 1997, Irene Presti retained respondent to represent her in connection with the prior purchase of an automobile. Two days later, she retained him in connection with an allegedly negligent home inspection. She paid him $794 and $750, respectively. Presti testified that, during the course of the representation, respondent advised her that her cases were "on the back burner," but proceeding apace. In 1998, Presti had difficulty in contacting respondent. Despite her letters and messages left on his answering machine, he did not comply with her requests for the return of her documents and her retainer. Respondent had relocated his office and changed his phone number without advising Presti. Ultimately, her friend, Elizabeth Appello, an attorney who knows respondent, gave her his telephone number.

Joan Hough, Presti's friend, and Peter J. Peluso, an attorney admitted to practice in New York and her brother-in-law, testified below.[1] In the spring of 1998, Hough contacted respondent in Presti's behalf. According to Hough, respondent advised her that

[1] The hearing panel report noted that the two, along with Presti, were "very credible witnesses."

he had been involved in a large legal matter that had been taking much of his time and that Presti's matters were "on the back burner." He stated, however, that he had filed complaints in both of her cases.[2] Respondent called Presti that evening and assured her that her matters were progressing. The two had no further communications.

At Peluso's suggestion, Hough called respondent again several days later and asked him for the court's file number. According to Hough, respondent admitted that he had not filed the complaints.

Peluso testified that he spoke with respondent on one occasion and urged him to contact Presti. According to Peluso, respondent acknowledged that he had not filed the complaints and agreed to return Presti's retainers. Peluso stated that he also asked Mitchell Singer, a New Jersey attorney, to contact respondent in Presti's behalf. Singer advised Peluso that he had spoken with respondent and had urged him to call Presti.

Notwithstanding respondent's assurances to Peluso, he never returned Presti's retainers and documents. In or about April 2000, Presti retained new counsel, who sent respondent a letter asking for information about the two cases and requesting the return of the retainers and documents. Respondent's reply was to leave a message with the new attorney, stating that he "had nothing to discuss."

Respondent conceded that he never advised Presti, in writing, of his new addresses or phone numbers. He testified that he does not send out notices of change of address; when he hears from his clients, he apprises them of the new address. He denied having

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[2] Hough's testimony referred to Presti's "case." Presumably, that term encompassed both matters.

told Presti and Hough that he had filed the complaints. He claimed that he had not filed them because he was "extraordinarily busy." He stated that he would have returned Presti's retainers to her, but for Peluso's statement that that would not make her "whole." He accused Peluso and Singer of attempting to extort $11,000 from him, an allegation denied by Peluso.[3] Respondent stated that he stopped communicating with Presti after Peluso had told him that he was representing her. Furthermore, he claimed, Presti had left a message on his home answering machine in the spring of 1998, stating that she had an attorney and "was going to sue [his] ass." In respondent's view, this statement meant that Presti had discharged him. He did not send Presti a letter confirming his understanding.

The Brand Matter (District Docket No. IIIA-01-003)[4]

In the fall of 1999, Helen Brand retained respondent to represent her in connection with a claim against an insurance company for items stolen from a moving truck in December 1995. She paid respondent $3,500. Apparently, respondent had some involvement in the matter since December 1995, but that was not made clear.

According to Brand, in November 1999 respondent told her that he had filed a complaint against the insurance company. In late 1999 or early 2000, she learned

[3] The DEC offered respondent the opportunity to present four rebuttal witnesses. For reasons not revealed in the record, the proceedings scheduled to allow their testimony did not go forward.

[4] Brand lives in Florida and was too ill to travel to New Jersey for the hearing. She testified via telephone.

through an insurance adjuster that respondent had not filed a complaint. Brand testified that she called respondent's office and asked for her retainer back, but that respondent did not comply with her request.

Brand complained that, on occasion, it was difficult to find respondent because he would move his office "from place to place" and not notify her of the new address. She claimed that respondent never advised her that she should not pursue the case or that he was no longer representing her.

Respondent, in turn, denied having told Brand that he had filed a complaint. According to respondent, he determined that, after Brand's husband's death, in November 1999, there were problems with her claim because his estate was an interested party, as were the beneficiaries. He contended that, in May 2000, he advised Brand that her case "would be impossible under the circumstances," but conceded that he did not do so in writing. He did not return Brand's retainer.

As to the lengthy passage of time, respondent contended that Brand would not proceed with the case while her husband was alive because she did not want him to get any money from the case.

The Schuldes Matter (District Docket No. IIIA-01-004E)

In May 1998, Matthew and Diane Schuldes retained respondent to initiate a lawsuit against the builder of their house. Respondent filed a two-count complaint for consumer fraud and breach of contract. The matter was dismissed twice: first, for failure

to answer interrogatories and, after it was restored, for respondent's failure to appear at an arbitration hearing in November 2000.

After the first dismissal, respondent paid a $300 restoration fee and served interrogatories to have the complaint reinstated. As to the second dismissal, he stated that he mistakenly thought that the scheduled arbitration was not going forward. He took no steps to reinstate the matter after the second dismissal. He was unwilling to reinstate the case because, during the Schuldes' depositions in September 2000, they acknowledged that, at the closing on their house, they had seen a receipt indicating that a homeowners' warranty form had been filed. According to respondent, that document precluded the consumer fraud claim against the builder.

According to the Schuldes, in late 2000 or early 2001, respondent explained the significance of the homeowners' warranty to them and told them that they had no case, that the consumer fraud claim was not valid and that he was obligated to withdraw the complaint. Respondent never advised the Schuldes to amend their complaint. According to respondent, the builder was no longer in business and, therefore, the Schuldes could not collect on a judgment against the corporation on the remaining count.

Respondent opined that the Schuldes knew that the homeowners' warranty had been filed and were intentionally bringing a fraudulent claim against the builder. According to the Schuldes, however, they had been advised by the Home Buyers Warranty Program, both telephonically, prior to the filing of the suit, and in writing in January 2001 (exhibit J-23), that their house had not been registered. They also stated

that, although they saw the document in question at their closing, its significance was not explained to them.

Respondent did not file a motion to be relieved as counsel. In or about late March 2001, respondent spoke with the builder's attorney and made a statement that was damaging to the Schuldes' case. Specifically, he advised counsel that he "was aware that Mr. and Mrs. Schuldes case was frivolous." Exhibit J-20.

In late 2000 or early 2001, the Schuldes were unable to communicate with respondent, despite their calls and letters by certified mail. The Schuldes then sought assistance directly from the judge hearing their case. Ultimately, the Schuldes retained another attorney. As of the date of the ethics hearing, the case was proceeding on an amended complaint.

With regard to the Schuldes' inability to locate respondent, he reiterated that he did not send out letters advising clients that he had moved his office or changed his phone number. He stated that the scope of his practice was such that he was "in constant touch" with his clients.

Despite the Schuldes' request for their file in January 2001, respondent did not turn it over until May 2001, after they had filed the ethics grievance.

* * *

As to Presti, the DEC found that respondent failed to return the client's phone calls, never notified her of his change of address, did not make reasonable efforts to expedite the litigation and misrepresented to Presti and Hough that he had filed the complaints.

In the Brand matter, the DEC found that respondent did not make reasonable efforts to expedite the litigation, misrepresented that he had filed the complaint and failed to keep Brand reasonably informed about the status of the matter.

In Schuldes, the DEC was scathing in its criticism of respondent's handling of the matter:

> The panel finds that Mr. Basaman did not serve Interrogatories, did not serve a Notice to Produce, and did not serve a deposition notice on the defendants. Therefore, he could not know what, if any, expert reports or defense strategy was going to be used against his clients. Accordingly, his failure to conduct discovery or do anything to ensure the case was properly prepared, constitute [sic] gross negligence. He also failed to make reasonable efforts to expedite the litigation and in effect 'hung his clients out to dry'. It was unnecessary for him to provide an opinion to his adversary as to his client's honesty or dishonesty. If he did not want to proceed with the case he should have withdrawn as counsel. He also could have amended the complaint to drop the Consumer Fraud Act and continue. Also compelling was the Schuldes' testimony as to the difficulty they had in contacting Mr. Basaman at a time when they were in a legal crisis. Again, he failed to notify them of his changes in address or phone number. They tracked him down and found him at a home address, and that is where they finally contacted him. He refused to turn over the file unless he discussed with the attorney the complaint that he now thought was frivolous. They had to resort to a pro se application to [the court] in order to keep their complaint from being dismissed.
>
> The panel also finds that he failed to keep his clients informed of the status of the matter.

The DEC found violations of RPC 1.1(a), RPC 1.1(b), RPC 1.4(a), RPC 3.2, and RPC 8.4(c) in Presti and Brand and RPC 1.1(b), RPC 1.4(a) and RPC 8.4(c) in Schuldes. There was no specific reference to RPC 1.6(a). Presumably, the DEC did not find a violation of that rule.

The DEC recommended a three-month suspension.

* * *

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

In Presti, respondent violated RPC 1.1(a), RPC 1.4(a), and RPC 8.4(c). His contention that he failed to file the complaint because he was too busy was troubling. His assertion that Presti could have learned where to reach him through a third party, after he relocated his office, was appalling. In addition, he misrepresented the status of the matters to Presti by assuring her that they were proceeding, when, in fact, he had done nothing to advance her interests. We were unable to find a violation of RPC 3.2, however, as there was no litigation to expedite.

In Brand, we found that, if respondent deemed it unwise to proceed with the matter, it was his duty to make that clear to Brand. Although he contended that he explained to Brand that she should not proceed, he admitted that he did not do so in writing. In addition, Brand denied respondent's contentions in this context. We noted that the insurance adjuster hired by Brand ultimately settled the case in her behalf. Finally, we deferred to the DEC's assessment of the witnesses' credibility and, like the DEC, concluded that respondent misrepresented to Brand that he had filed a complaint. We found, thus, that respondent's conduct in the Brand matter violated RPC 1.1(a), RPC 1.4(a) and RPC 8.4(c). As in Presti, we dismissed the allegation of a violation of RPC 3.2, because there was no litigation to expedite.

In Schuldes, respondent allowed the complaint to be dismissed for failure to answer interrogatories. Although he took steps to have it reinstated, later it was again dismissed for his failure to appear at an arbitration hearing. In light of respondent's testimony, however, that he missed the arbitration proceeding because of a misunderstanding, we found no clear and convincing evidence of unethical conduct with respect to the second dismissal. It was respondent's subsequent conduct that was fraught with improprieties. He discounted any possibility that the Schuldes truly believed that their house had not been registered with the Home Buyers Warranty Program, a belief supported by their receipt of a letter from that organization so advising them. Also, respondent should have immediately sent a letter to the Schuldes, withdrawing from the representation and forwarding their documents, as well as any unearned portion of the retainer. This he failed to do. His opinion to counsel for the builder about the validity of the Schuldes' contentions was against his clients' interests and not supported by any reasonable basis. Altogether, thus, respondent's conduct in the Schuldes matter violated RPC 1.4(a), RPC 1.6(a) and also RPC 1.4(b) for his failure to explain the circumstances of the case clearly enough to allow his clients to make an informed decision about the representation. Specifically, despite respondent's belief that a judgment against the builder was worthless, he should have advised the Schuldes that the complaint could have been amended and the suit pursued on a breach of contract theory. Although respondent was not specifically charged with a violation of RPC 1.4(b), the record developed below contains clear and convincing evidence of a violation of that rule. Moreover, respondent

did not object to this line of questioning at the hearing below. Therefore, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222 (1976).

We also found a violation of RPC 1.16(d) (failure to protect client's interests upon termination of the representation) for respondent's failure to return the files to the clients, as requested. Here, too, the complaint did not charge a violation of that rule. For the same reasons expressed as to RPC 1.4(b), however, we deemed the complaint amended to conform to the proofs.

Finally, we dismissed the charge of a violation of RPC 8.4(c) in Schuldes for lack of clear and convincing evidence of a misrepresentation and also dismissed the charge of a violation of RPC 1.1(b) (pattern of neglect) for respondent's conduct in these three matters. Ordinarily, a finding of a pattern of neglect requires conduct involving gross neglect in at least three matters. Here, we found that respondent displayed gross neglect in Presti and Brand, but not in Schuldes.

In aggravation, we considered that respondent refused to acknowledge any wrongdoing in these matters, testifying at length about the alleged misconduct of others. For example, he claimed that Peluso was practicing law where he was not admitted, that Hough was holding herself out as an attorney, that Presti left a message on his home answering machine using profanity, that the Schuldes lied about having received the homeowners' warranty and that another attorney committed unethical and criminal acts by, among other things, advising the grievants to contact the DEC. We rejected respondent's attempts to cast blame on other people. As the presenter pointed out, we have three cases where the clients do not know each other and are making the same

allegations: that respondent did not communicate with them, lied to them about the status of their cases and moved his office without notice to them. In the face of three instances of similar allegations, respondent's contentions are not worthy of belief.

One more point warrants mention. Respondent stated below that an illness suffered by his daughter took a great deal of his time and energy. Since he presented no evidence about this circumstance, it has not been considered as a mitigating factor.

There remains the issue of the appropriate degree of discipline. Generally, a combination of gross neglect, lack of diligence, failure to communicate and misrepresentation will result in the imposition of a reprimand, where the attorney has not been previously disciplined. See In re Porwich, 159 N.J. 511 (1999) (reprimand for misconduct in three matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to cooperate with disciplinary authorities and misrepresentation about the status of a case to the client); In re Plaia, 154 N.J. 179 (1998) (reprimand for unethical conduct in four matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to provide a written fee agreement, failure to turn over a client's file, failure to cooperate with disciplinary authorities and, in all four matters, misrepresentation about the status of the case to his client); and In re King, 152 N.J. 380 (1998) (reprimand for an attorney who, in three matters, engaged in a combination of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, refusal to return an unearned retainer and failure to turn over a file).

Respondent was guilty of a number of violations in the Presti, Brand and Schuldes matters that, standing alone, would merit a reprimand. In aggravation, however, we considered respondent's lack of remorse, lack of recognition of any wrongdoing on his own part and attempts to cast blame on the alleged infirmities of others.

In light of the foregoing, we determined to impose a three-month suspension. Two members did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edward Basaman
Docket No. DRB 02-464

Argued: March 13, 2003

Decided: May 20, 2003

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley		X					
Boylan							X
Brody		X					
Lolla		X					
O'Shaughnessy		X					
Pashman							X
Schwartz		X					
Wissinger		X					
Total:		7					2

Robyn M. Hill
Chief Counsel