SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 03-079 and DRB 03-080

IN THE MATTER OF

C. STEPHEN BARTOLETT

AN ATTORNEY AT LAW

IN THE MATTER OF

KIM MICHELLE KLINE

AN ATTORNEY AT LAW

Decision

Argued: May 15, 2003

Decided: July 15, 2003

Carl N. Tripician appeared on behalf of the District I Ethics Committee.

Respondents waived appearance for oral argument.[1]

[1] Despite Bartolett's assurances that he would confirm his verbal waiver of oral argument with a written waiver on behalf of himself and Kline, he failed to do so.

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

These related matters were before us based on recommendations for discipline filed by the District I Ethics Committee ("DEC"). The complaint charged both respondents with violations of *RPC* 1.4(a) (failure to communicate with a client), mistakenly cited as *RPC* 1.4(b), *RPC* 1.5(b) (failure to prepare a written fee agreement), *RPC* 1.5(c) (failure to prepare a settlement statement), *RPC* 1.8(a) (prohibited business transaction), *RPC* 1.15 (breach of an escrow agreement) and *RPC* 5.1(c) (failure to supervise partner) (count one); *RPC* 1.1, presumably (a) (gross neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.4(a), *RPC* 1.5(b), *RPC* 1.5(c), *RPC* 5.1(c) and *RPC* 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) (count two); *RPC* 1.4(a) (count three); *RPC* 5.5(a) (failure to maintain a *bona fide* office) (count four); and *RPC* 8.1, presumably (b) (failure to cooperate with a disciplinary authority) (count five).

Bartolett was admitted to the New Jersey bar in 1983. He was suspended for three months, effective August 1, 2003, after he was found guilty of gross neglect, lack of diligence, failure to comply with a client's requests for information, failure to explain a matter sufficiently to a client, conflict of interest, failure to turn over files to a client, failure to maintain a *bona fide* office, failure to cooperate with a disciplinary authority, misrepresentation to a client about the status of a matter and conduct prejudicial to the

administration of justice. Specifically, Bartolett failed to properly acquire and activate a liquor license for a client, failed to advise the client of the consequences of pleading guilty to liquor license violations, failed to complete a bankruptcy matter, failed to complete the formation of four corporations, allowed default judgments to be entered against the client, engaged in a conflict of interest by representing both the client and a corporation in which the client was both an investor and a creditor, failed to comply with a court order requiring him to repay legal fees received after the filing of the client's bankruptcy petition, failed to turn over the client's file, misrepresented the status of legal matters to the client, failed to comply with the client's requests for information about his various legal matters, failed to maintain a *bona fide* office and failed to cooperate with the ethics investigation.

Kline was admitted to the New Jersey bar in 1985. She has no history of discipline.

Respondents are husband and wife who practice law as a partnership known as "Bartolett & Kline." Their office is located in Kline's parents' house in Margate, New Jersey. Although they list an office in Philadelphia on their business cards and letterhead,

they no longer maintain that office. On July 8, 2002, the day before the ethics hearing was originally scheduled, the Margate property was damaged by fire.[2]

* * *

In or about September 1994, the grievant, Claire Solomon ("Solomon") and her husband, Emanuel, retained Bartolett to represent them in connection with personal injuries Emanuel had sustained in an automobile accident. The Solomons and respondents maintained a social relationship since about 1984. Bartolett had represented the Solomons in prior matters, such as a neighborhood dispute, the loss of Solomon's fur coat and the bankruptcy of their restaurant in Atlantic City. On these occasions, Bartolett had not prepared written fee agreements and, with the exception of the fur coat matter, did not charge a fee. According to Solomon, the parties had agreed to a "barter system" whereby, in exchange for free legal work, respondents were given free meals and drinks at the Solomons' restaurant. Solomon stated that she never met with respondents at a law office or respondents' home. They discussed legal matters either at the Solomons' restaurant or at the Solomons' home.

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2 The hearing was delayed until October 29, 2002.

Solomon testified that Bartolett never provided a written fee agreement for the personal injury matter. According to Solomon, after her husband died, in March 1998, Bartolett settled the lawsuit for $25,000, without her knowledge or consent. She conceded, however, that she did not know whether her husband had agreed to accept that sum before he died. Solomon stated that she did not receive a timely settlement statement from Bartolett. Instead, when Bartolett sent her a September 2, 1998 letter outlining the status of various legal matters that he was handling for her, he enclosed a statement indicating, among other things, that he had calculated his one-third contingent fee based on the gross amount of the settlement, before deducting the litigation expenses.

At some point, Solomon determined to sell the restaurant. A prospective buyer paid a $10,000 deposit, which Bartolett retained in an escrow account. According to Solomon, without her knowledge, Bartolett used the escrow funds to pay the mortgage on the restaurant. Because the restaurant sale did not occur, Solomon was obligated to return the $10,000 deposit. Solomon testified that Bartolett loaned her $10,000 to return to the buyer, with the understanding that he would be reimbursed from the settlement proceeds from the personal injury litigation. The September 2, 1998 settlement statement contains a $10,000 deduction for an "interest free loan."

The Solomons also retained Bartolett in connection with a life insurance policy issued to Emanuel by National Benefit Life Insurance Company ("National"), which had

lapsed. The Solomons asked Bartolett to take the necessary action to reinstate it. Solomon stated that, after their insurance agent retained some of their premiums, he disappeared. They had paid more than $64,000 and believed that the policy retained some value.

On December 9, 1996, Bartolett sent an inquiry to National about reinstating the insurance policy. On January 29, 1997, National replied that it would reinstate the policy based on a *pro rata* reduction of the face amount from $250,000 to $94,000. On April 9, 1997, Bartolett submitted to National a signed statement indicating that the Solomons had agreed to the reduction of the face amount of the policy. On July 15, 1997, National informed Bartolett that it had reinstated Emanuel's original insurance policy and that the $16,307.62 premium was due. Having received neither the premium nor a reply, National sent a September 3, 1997 letter to Bartolett expressing its understanding that his clients were no longer interested in the policy. The letter also advised Bartolett that National was closing its file. On October 3, 1997, Bartolett conveyed to National his understanding that National would be reinstating the policy with no further premium payments. On October 27, 1997, National informed Bartolett that his understanding was incorrect, noting that, in its January 29, 1997 letter, it had enclosed an "illustration" showing the amount of the premium due. The record contains no further communications between Bartolett and National.

Based on Solomon's conversations with Bartolett, she believed that the insurance policy would be reinstated without additional payments, that there was equity in the policy and that she would receive a benefit from the life insurance company upon Emanuel's death. She claimed that, when they found out otherwise, Bartolett advised her to wait to file a lawsuit against National until after her pending bankruptcy petition was finalized, because any recovery would have to be turned over to the bankruptcy trustee. Bartolett's September 2, 1998 letter that advised Solomon of the status of her various legal matters stated as follows:

> You asked regarding the status of the life insurance claim. At this point they are refusing to pay. I think that I will have to bring a law suit. I want to wait to bring this until I am absolutely certain that your bankruptcy is over and the IRS and N.J. Dept. of Revenue have decided not to go against you personally for the tax debt. Otherwise, they will only attach any proceeds from a law suit. Secondly I think that you should bring a lawsuit against the cleaners for the oil spill which terminated the only real offer you had for the purchase of the restaurant. Again I want to wait to file this. I will take these cases on a contingency fee basis meaning that you pay us one-quarter of that recovered if settled without a trial or one-third of that recovered if we have to go to trial. We will advance the costs because I know that you do not have the available money to do so.
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> [Exhibit P-4]

Although Bartolett advised Solomon to delay the filing of the lawsuits until the conclusion of the bankruptcy matter, the Solomons had received a discharge from the bankruptcy court in March 1998, six months before Bartolett's letter. Solomon conceded that Bartolett had explained to her that, despite the bankruptcy discharge, a $70,000 debt

to the federal and state governments for employee withholdings was not dischargeable and constituted liens against their property. Solomon claimed, however, that she had sold her Margate property and had satisfied those liens. According to Solomon, although Bartolett told her that he would file a lawsuit against National, he never did so and the matter was never resolved. She claimed that Bartolett never told her that he was not going to sue National. Solomon also denied that Bartolett had advised her about the applicable statute of limitations. She asserted that Bartolett did not reply to her inquiries about the status of the matter. A document appearing to be the second page of a letter from Bartolett to Solomon, which was introduced into evidence, reads as follows:

> My letter to the insurance company asking for whether you have any equity in the company has gone unanswered. They have only indicated that your life insurance policy lapsed in March 1992. . . . [W]e may have to sue the insurance company and Sol Kaplan alleging that you should be refunded the money because of some sort of illegality. Such a lawsuit would have to be brought within six years of March 1992. However I would like to move this fall in this matter.
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> [Exhibit P-6]

The letter is signed by Bartolett and bears a handwritten date of October 11, 1995. Bartolett conceded that the signature was his, but denied that he had written the date. Although Bartolett advised Solomon of the statute of limitations, he, nevertheless, allowed it to expire.

Solomon testified that, after she received the September 2, 1998 settlement statement, she informed Bartolett that it did not reflect a $1,500 credit for the food and

drink provided to respondents at the restaurant. According to Solomon, after she asked Bartolett for $1,500, he became angry. She had no further contact with him.

Solomon contended that, because respondents did not comply with her request for a copy of the file, she had to obtain papers from National.

Solomon stated that she dealt exclusively with Bartolett and that she never sought legal advice from Kline.

With respect to the charge that respondents failed to maintain a *bona fide* office, the following facts were undisputed: (1) respondents used as an office a room on the second floor of a house owned by Kline's parents, in which they housed a computer and a dedicated telephone line; (2) respondents did not meet clients at the office; (3) there was no sign identifying the location as a law office; and (4) the house in which the office was located was in a residential area.

As to the charge that respondents failed to cooperate with the DEC investigation, the following facts were established. Respondents did not reply to the presenter's letters of August 6, August 8, August 13 and September 26, 2001, sent to the Margate address, seeking information about Solomon's grievance. In addition, respondents did not reply to the presenter's August 21, 2001 letter sent to their Philadelphia office address. All of the letters were sent by certified and regular mail. Although the certified letters were returned marked "unclaimed," the regular mail was not returned.

On January 18, 2002, the presenter served respondents with a notice to produce documents. On February 22, 2002, the presenter again requested the documents. Respondents did not reply to these requests. On March 20, 2002, the presenter filed a motion to suppress respondents' answer and to exclude evidence, based on their failure to reply to his request for the production of documents. On April 11, 2002, the panel chair asked respondents to reply to the motion. In an April 20, 2002 letter to the panel chair, Bartolett stated that (1) they had requested a two-month extension to comply with the request for documents because Kline's mother had suffered a stroke; (2) they had not received the motion; (3) they would reply to the request for the production of documents by the end of April; and (4) the presenter should have sufficient time to prepare his case because the hearing was scheduled for July 9, 2002. Notwithstanding this reply, respondents failed to produce any documents. Therefore, the panel chair entered a May 14, 2002 order suppressing respondents' answer and precluding them for presenting evidence at the hearing.

On September 18, 2002, the panel chair informed respondents that the hearing had been rescheduled to October 29, 2002 and that he would permit them to present evidence if they complied with the presenter's request for documents within ten days of the letter. Respondents did not take advantage of this final opportunity to comply with the request for documents. Notwithstanding the suppression order and the presenter's contention that

it would be fundamentally unfair to permit respondents to introduce evidence after they had failed to provide him with any information, the panel allowed respondents to testify and to present other evidence at the hearing.

For his part, Bartolett claimed that he knew the Solomons socially because they were friends of his wife's parents and that, although he knew that the Solomons could not pay him, he began doing legal work for them. According to Bartolett, there was a signed retainer agreement for the personal injury case, providing for a one-third contingent fee. Despite this contention, he did not produce the agreement, ostensibly due to the fire at the Margate property.

Bartolett testified that the Solomons' restaurant never earned a profit and that they had decided to sell it; when the restaurant's mortgage became the subject of foreclosure, Solomon begged him to release the $10,000 escrow funds to her to permit her to pay the mortgage. Bartolett claimed that he gave her a $10,000 interest-free loan instead, funded by his own monies. Contrary to Solomon's testimony that Bartolett paid the mortgage from the escrow funds without her knowledge or consent and then lent her funds to replace the escrow deposit, Bartolett contended that he had retained the deposit intact and had lent Solomon his own monies. He stated that, after the sale of the restaurant was canceled, he returned the $10,000 deposit to the buyer. According to Bartolett, there was

no loan agreement; he would simply remind Solomon about the loan, on legal bills issued to her.

Bartolett contended that he had Emanuel's approval to settle the personal injury lawsuit for $25,000. Bartolett stated that, although Emanuel signed a release, he did not sign a settlement statement. Bartolett did not produce the release.

Bartolett stated that, after he deposited the settlement proceeds in his account and took his fee, the Solomons filed a bankruptcy petition. In contrast to Solomon's testimony that she had sold property in Margate to satisfy the outstanding tax liens, Bartolett asserted that Solomon did not own the home in which she resided and that her children lived in the only property that she owned. According to Bartolett, the liens remained unsatisfied.

Bartolett conceded that he calculated his fee based on one-third of the gross recovery of $25,000, without first deducting the litigation expenses.

With respect to the life insurance matter, Bartolett claimed that, when National agreed to reinstate the policy on a *pro rata* basis, he was under the impression that the Solomons were not required to pay an additional premium. Despite his September 2, 1998 letter to the Solomons, stating that he would file a lawsuit against National in federal court, he denied agreeing to sue National. He claimed that he had simply discussed this possibility with the Solomons. According to Bartolett, he recommended

that they not file a lawsuit because they did not have a "good case" and because any recovery would be turned over to the bankruptcy trustee. Although the bankruptcy discharge had been issued in March 1998, Bartolett contended that the tax liens were not dischargeable and remained outstanding. He further claimed that the government had been considering filing criminal charges against Solomon for failure to pay taxes. According to Bartolett, he thought that Solomon had understood that the insurance claim was not worthwhile.

According to Bartolett's October 11, 1995 letter, the statute of limitations against National was due to expire in March 1998. The presenter pointed out that, while Bartolett had advised Solomon not to file suit against National, because of the pending bankruptcy, he had allowed the statute of limitations to expire without filing a complaint. Bartolett claimed that he had contemplated filing a lawsuit based not on the lapse of the insurance policy, but on National's misrepresentation about reinstating the life insurance policy without the payment of additional premiums. Bartolett claimed that he never filed that complaint because the case was weak.

Both respondents acknowledged that they had not complied with Solomon's request for copies of her file, claiming that she already had those documents.

As to the failure to maintain a *bona fide* office, respondents noted that, in 1995, a complaint charging them with a violation of that rule was dismissed post-hearing.

According to Bartolett, he understood that their office arrangement complied with the *bona fide* office rule because they worked on a part-time basis. In this regard, Kline testified as follows:

> I don't advertise to get clients off the street. I don't like to deal with people that I don't really know. I don't want to be killed or whatever. I deal with people that I know. I've had plenty of people come to my house that are my friends that I do legal work for. We do it in a social setting lots of times. We have dinner and talk about business. That's how I do it. Or I go to their place of business, which usually helps them since what I do, all of their records is [sic] at their business or they feel more comfortable in their living room. . . . All my clients are friends, or at least they all were friends until recently. . . . I can't practice very much. I have a very ill mother and I take care of her.
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> [T148][3]

Bartolett apologized for his failure to reply to the DEC investigator's inquiries about the grievance, citing his mother-in-law's stroke and the fire in Margate. When asked why he had failed to comply with his own deadline to provide documents by April 30, 2002, Bartolett replied that he had received a notice that he would not be permitted to introduce evidence at the hearing. When the panel chair pointed out that the order barring him from introducing evidence had not been sent to him until May 16, 2002, well after April 30, 2002, Bartolett could not explain why he had not submitted documents to the investigator. He stated that, although the panel chair had given him another opportunity

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[3] T refers to the October 29, 2002 hearing before the DEC.

to do so, by then the fire had destroyed the documents and the computer files. He denied that his failure to cooperate with the investigation was wilful.

Two days after the hearing, the presenter asked the panel chair to consider the complaint amended to include a charge of a violation of *RPC* 1.16(d) (failure to protect client's interest upon termination of representation). The presenter maintained that, because respondents had failed to reply to the grievance and cooperate with the investigation, only at the hearing had he learned of Bartolett's contention that he had never agreed to pursue a lawsuit against National. The presenter argued that respondents failed to properly terminate the attorney-client relationship in the life insurance matter and failed to turn over Solomon's file, as requested.

The panel denied the presenter's request to charge a violation of *RPC* 1.16(d), because the complaint had no allegations in this regard and the hearing had been closed.

* * *

In count one, the DEC found that Bartolett's failure to prepare a written fee agreement for the personal injury matter violated *RPC* 1.5(c) [more appropriately *RPC* 1.5(b)]. Finding that Bartolett's September 2, 1998 settlement statement complied with the requirements of *RPC* 1.5(c), the DEC dismissed that charge. The DEC found also that

Bartolett violated *R.*1:27-7(c) [more appropriately *R.*1:21-7(d)], by calculating his fee on the gross amount of the settlement. The DEC opined, however, that *RPC* 1.5(a) was the only applicable *RPC* for this impropriety and declined to find a violation of that rule, finding that Bartolett's fee did not "shock the conscience." The DEC found further that, although Bartolett's loan of $10,000 to Solomon did not violate *RPC* 1.8(a), it ran afoul of *RPC* 1.8(e) (financial assistance to a client in connection with pending or contemplated litigation). The DEC dismissed the remaining charges of count one, that is, the charges of violations of *RPC* 1.4(a), *RPC* 1.15, and *RPC* 8.4(c).

As to count two, the DEC found that Bartolett violated *RPC* 1.3 and *RPC* 1.4(a) by not contacting Solomon until September 2, 1998, almost one year after Bartolett's receipt of National's October 27, 1997 letter disputing his contention that it had agreed to reinstate the insurance policy without payment of a premium. The DEC dismissed the remaining charges of count two, as follows: *RPC* 1.5(c), concluding that, because Bartolett had regularly represented Solomon in the past, a written fee agreement was not necessary; *RPC* 1.1(a), finding that, although Bartolett's failure to file the life insurance lawsuit might have constituted simple negligence, it did not rise to the level of gross neglect; and *RPC* 8.4(c), finding no clear and convincing evidence that Bartolett misrepresented to Solomon the status of the bankruptcy and life insurance matters.

With respect to Kline, the DEC found no evidence that she ordered or ratified Bartolett's conduct or that she had direct supervisory authority over him. The DEC, thus, declined to find a violation of *RPC* 5.1(c).

The DEC also dismissed the *bona fide* office charge, based on the following:

> Both Mr. Bartolett and Ms. Kline testified, however, that they did have an office on the second floor of the Bayshore Drive house, which they used as a law office. They testified that they handled legal paperwork in that office, had a computer which they used for that purpose, and that they also had a dedicated phone line for the law office. They had business cards printed with both the Philadelphia and Margate office addresses and phone numbers. (See Exhibit 'P-1'.) Although they would not meet clients there on a regular basis, Ms. Kline did testify that she would meet some clients at the house, i.e. friends for whom she performed legal work. Although the Respondents' use of the office on the second floor of 7707 Bayshore Drive, Margate, New Jersey may not have been on a full-time basis, the Panel finds that it did meet the requirements of a 'bona-fide' office, and the Panel therefore does not find a violation of R.P.C. 5.5. It should also be pointed out that the evidence showed that in approximately 1995 the Respondents were previously charged with a violation of the bona-fide office rule, which matter was reported to have gone to Hearing, but that no violation was found. Mr. and Mrs. Solomon testified on the Respondents' behalf at that Hearing.

Finally, the DEC found that both respondents failed to cooperate with the DEC investigator, in violation of *RPC* 8.1(b).

The DEC recommended a three-month suspension for Bartolett and a reprimand for Kline.

* * *

Following a *de novo* review of the record, we are satisfied that the DEC's finding that respondents' conduct was unethical is supported by clear and convincing evidence. For the reasons expressed below, we determined to suspend Bartolett for three months and to admonish Kline.

Bartolett agreed to represent the Solomons in connection with Emanuel's injuries. Solomon claimed that Bartolett did not prepare a written fee agreement. Although Bartolett contradicted this assertion, he did not produce the document, presumably because it had been destroyed in the Margate property fire. Like the DEC, we found that Bartolett violated *RPC* 1.5(c), based on Solomon's testimony. In addition, Bartolett admitted that he calculated his contingent fee on the gross amount of the settlement, in violation of *RPC* 1.5(a). On the other hand, because Bartolett ultimately gave Solomon a settlement statement, albeit late, we dismissed the charge that he failed to comply with *RPC* 1.5(c).

The record also did not establish that Bartolett failed to communicate with Solomon about the personal injury litigation. Solomon acknowledged that she did not know whether Emanuel had consented to the $25,000 settlement. There was no evidence that Bartolett had failed to keep Solomon informed about the progress of the litigation. We, therefore, dismissed the charge that Bartolett violated *RPC* 1.4(a).

With respect to the allegation that Bartolett violated *RPC* 1.8(a), he acknowledged that, after Solomon asked him for funds to keep the restaurant operating, he lent her $10,000, with the understanding that she would reimburse him with funds from the anticipated personal injury settlement. Although Bartolett did not charge Solomon interest, the loan still constituted a business transaction, requiring disclosure of the terms of the transaction to the client, advice to consult other counsel and written consent by the client. Bartolett did not comply with these safeguards. Because Bartolett did not loan funds to Solomon for the purpose of financing litigation, however, he did not violate *RPC* 1.8(e), as found by the DEC. That rule prohibits attorneys from providing financial assistance to a client in connection with pending or contemplated litigation. Here, Bartolett loaned Solomon his own funds to enable her to continue to operate the restaurant. Accordingly, *RPC* 1.8(a), not *RPC* 1.8(e), was violated.

We determined to dismiss the remaining charges in count one. There was no clear and convincing evidence that Bartolett improperly disbursed trust funds, in violation of *RPC* 1.15(a). Bartolett testified that he maintained intact the $10,000 in connection with the proposed restaurant sale and that he extended a loan to Solomon out of his own funds. No documentary evidence, such as banking records, was introduced to establish that Bartolett failed to maintain the funds in escrow. In addition, there was no evidence of conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of *RPC*

8.4(c). We also dismissed the charge of a violation of *RPC* 5.1(c) (failure to supervise a partner) as inapplicable to these facts.

As to count two, the life insurance matter, on September 2, 1998, Bartolett wrote to Solomon about the status of various matters, stating that his fee for the life insurance case would be one-fourth of the recovery if settled before trial and one-third if the case proceeded to trial. Because Bartolett notified Solomon, in writing, of the basis of his fee, we dismissed the charge that he violated *RPC* 1.5(b) and *RPC* 1.5(c).

Bartolett apparently believed that he had negotiated the reinstatement of the insurance policy issued by National without the requirement of any additional premium. On April 9, 1997, he sent National a letter and a statement signed by the Solomons, agreeing to the *pro rata* reinstatement of the insurance policy. He failed to reply, however, to a July 15, 1997 notice from National advising him of the premium due. Finally, on October 3, 1997, in response to a September 3, 1997 letter from National indicating that it was closing its file, Bartolett told National that he had assumed that the policy would be reinstated without the payment of an additional premium. National disavowed any agreement in this regard and pointed out that its January 29, 1997 letter enclosed an "illustration" showing the amount of payment required. Because it is possible that Bartolett misunderstood the terms of the agreement, however, it cannot be said that he misrepresented the status of the matter when he informed the Solomons that the policy

would be reinstated without further payment. We, therefore, dismissed the charge that Bartolett violated *RPC* 8.4(c).

In his September 2, 1998 letter, Bartolett advised Solomon that he would file a lawsuit against National in federal court, after he was satisfied that she would not be liable to the federal and state governments for the payment of taxes. Bartolett contended that, after he reviewed the matter, he determined that the case was not worthwhile and so advised Solomon. He failed to do so in writing, however, and the statute of limitations lapsed. Bartolett's failure to file the lawsuit, despite his September 2, 1998 letter indicating such intent, violated *RPC* 1.1(a) and *RPC* 1.3. Moreover, his claim that he allowed the statute of limitations to lapse because he was planning to file a lawsuit based on fraud was viewed with skepticism. The documents do not evidence any misrepresentation by National that it would reinstate the policy without a premium payment.

We also found that Bartolett violated *RPC* 1.4(a) by failing to comply with Solomon's requests for copies of her *National* file and failing to advise her that he would not pursue the *National* lawsuit. As in count one, because the record did not establish any cause to impute liability from Bartolett to Kline, we dismissed the charge that they violated *RPC* 5.1(c).

We found that respondents failed to maintain a *bona fide* office. They admitted that they practiced part-time in a room on the second floor of Kline's parents' house, that

they did not meet clients at the office and that there was no outside sign identifying the law office. *Rule* 1:21-1(a) provides as follows:

> For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

Respondents' office arrangement obviously did not comply with the above requirements, in violation of *RPC* 5.5(a).

Respondents also violated *RPC* 8.1(b). Although they filed an answer to the complaint, they failed to reply to the grievance and to the investigator's inquiries about the grievance and failed to produce requested documents, despite numerous opportunities given to them. Bartolett's failure to submit to us a written waiver of oral argument, as promised, is consistent with his pattern of failure to cooperate with disciplinary authorities.

In sum, Bartolett violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a) (in two matters), *RPC* 1.5(a), *RPC* 1.5(c), *RPC* 1.8(a), *RPC* 5.5(a) and *RPC* 8.1(b). Absent special circumstances, discipline for failure to maintain a *bona fide* office alone usually results in the imposition of a reprimand. In *In re Kasson*, 141 *N.J.* 83 (1995), the attorney received a reprimand for his failure to comply with the *bona fide* office rules. "The requirement

that attorneys maintain a bona fide office represents, not an effort at protectionism, but a reasonable effort to assure 'competence, accessibility and accountability' of attorneys for the benefit of clients, courts, counsel and parties. *In re Sackman, supra,* 90 *N.J.* at 533, 448 *A.* 2d 1014." *In re Kasson, supra*, 141 *N.J.* at 87 (1995).

In addition, discipline for similar combinations of the violations committed by Bartolett ranges from a reprimand to a suspension. *See, e.g., In re Hintze*, 164 *N.J.* 548 (2000) (reprimand for gross neglect, lack of diligence, failure to communicate with a client and failure to cooperate with disciplinary authorities); *In re Chen*, 142 *N.J.* 479 (1995) (reprimand for gross neglect, failure to communicate with a client, failure to maintain a *bona fide* office and failure to cooperate with disciplinary authorities); *In re Gordon*, 139 *N.J.* 606 (1995) (reprimand for gross neglect, lack of diligence, failure to communicate with a client and failure to return a file to a client); *In re Wolfe*, 167 *N.J.* 278 (2001) (three-month suspension where, in one matter, the attorney was guilty of gross neglect, lack of diligence and failure to cooperate with disciplinary authorities; the attorney also failed to communicate with a client in two matters; the attorney had a prior admonition and a reprimand); *In re Hodge*, 130 *N.J.* 534 (1993) (three-month suspension where attorney was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to return client property, failure to maintain a *bona fide* office and failure to cooperate with disciplinary authorities).

Based on Bartolett's disciplinary history, we unanimously voted to suspend him for three months, to begin upon completion of his prior three-month suspension.

Kline, in turn, violated *RPC* 5.5(a) and *RPC* 8.1(b). In some cases, reprimands have been imposed for similar conduct. *See, e.g., In re Hintze, supra*, 164 *N.J.* 548 (2000); *In re Chen, supra*, 142 *N.J.* 479 (1995); *In re Pitt*, 121 *N.J.* 398 (1990) (reprimand where attorney failed to maintain a *bona fide* office and failed to cooperate with disciplinary authorities). In other cases, mitigating circumstances militated in favor of admonitions. *See, e.g., In re Young*, 144 *N.J.* 165 (1996) (admonition for failure to maintain a *bona fide* office; attorney had only one client, an estate, in New Jersey); and *In re Beck*, 143 *N.J.* 308 (1996) (admonition for *bona fide* office violation; attorney met clients by appointment at a shore residence leased by a family member; immediately upon learning of the ethics investigation, he signed a lease and obtained a *bona fide* office). *See, also, In the Matter of Ronald Sharper,* DRB 00-153 (November 27, 2000) (admonition where attorney failed to maintain a *bona fide* office and practiced law while ineligible; attorney had a prior fifty-one year unblemished career); *In the Matter of Peter Hess*, DRB 96-262 (September 24, 1996) (admonition where attorney failed to maintain a *bona fide* office and practiced law while ineligible; attorney had only one case in New Jersey and was not motivated by greed).

Here, because Kline testified that the only clients she represented were friends, we concluded that her violation of *RPC* 5.5(a) was merely technical. A six-member majority, thus, determined that an admonition is sufficient discipline for her conduct. Three members voted to dismiss the complaint against Kline.

We further required respondents to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of C. Stephen Bartolett
Docket No. DRB 03-079

Argued: May 15, 2003

Decided: July 15, 2003

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		9					

Julianne K. DeCore
Julianne K. DeCore
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kim Michelle Kline
Docket No. DRB 03-080

Argued: May 15, 2003

Decided: July 15, 2003

Disposition: Admonition

Members	***Disbar***	***Suspension***	***Reprimand***	***Admonition***	***Dismiss***	***Disqualified***	***Did not participate***
Maudsley				X			
O'Shaughnessy					X		
Boylan					X		
Holmes					X		
Lolla				X			
Pashman				X			
Schwartz				X			
Stanton				X			
Wissinger				X			
Total:				6	3		

Julianne K. DeCore
Julianne K. DeCore
Acting Chief Counsel