SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-407

IN THE MATTER OF

JOSEPH A. MAFFONGELLI

AN ATTORNEY AT LAW

Decision

Argued: February 6, 2003

Decided: April 21, 2003

Sherilyn Pastor appeared on behalf of the District VA Ethics Committee.

John C. Whipple appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by Special Master Charles F. Kenny. The eleven-count complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to keep a

client reasonably informed about the status of a matter and to comply with reasonable requests for information), *RPC* 1.5(c) (failure to prepare written fee agreement), *RPC* 1.16(d) (failure to turn over client's file), *RPC* 3.2 (failure to expedite litigation), *RPC* 3.3(a)(2) (failure to disclose material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client), *RPC* 3.3(a)(5) (failure to disclose to a tribunal a material fact with knowledge that the tribunal may be misled), *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and *RPC* 8.4(d) (conduct prejudicial to the administration of justice) (count one); *RPC* 3.2 and *RPC* 8.4(d) (count two); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.5(c), *RPC* 3.2, *RPC* 8.4(c) and *RPC* 8.4(d) (count three); *RPC* 3.2, *RPC* 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and *RPC* 8.4(d) (count four); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.4(b) (failure to explain a matter to permit the client to make informed decisions), *RPC* 1.5(c), *RPC* 1.7(b)(1) and (2) (conflict of interest), *RPC* 3.2, *RPC* 8.4(c) and *RPC* 8.4(d) (count five); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.4(b), *RPC* 1.5(c), *RPC* 1.7(b)(1) and (2), *RPC* 3.2 and *RPC* 8.4(d) (count six); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.4(b), *RPC* 1.5(c), *RPC* 1.7(b)(1) and (2), *RPC* 3.2, and *RPC* 8.4(d) (count seven); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.4(b), *RPC* 1.5(c), *RPC* 1.7(b)(1)and (2), *RPC* 3.2, and *RPC* 8.4(d) (count eight); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.5(c), *RPC* 1.7(b)(1) and (2), *RPC* 3.2, and *RPC* 8.4(d) (count nine); *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.5(c), *RPC* 3.2, and *RPC* 8.4(d) (count ten); and *RPC* 1.1(b) (pattern of neglect) (count eleven).

Respondent was admitted to the New Jersey bar in 1969. He has no disciplinary history. He is a sole practitioner in Montclair, Essex County.

The facts are generally not in dispute. Indeed, the presenter and respondent, through his counsel, entered into a stipulation of facts encompassing many of the allegations of the complaint.

After practicing law for almost thirty years without any apparent problems, respondent engaged in a pattern of conduct that caused concern among the Superior Court judges in Passaic County. On March 1, 2000 the Assignment Judge, the Honorable Robert J. Passero, contacted the Office of Attorney Ethics ("OAE") about respondent's "bizarre behavior in the manner in which he practices law." After investigating the matter, the District VA Ethics Committee filed a formal ethics complaint against respondent. The special master presided over a seven-day hearing and issued a report recommending a three-month suspension, with conditions. Following a *de novo* review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is supported by clear and convincing evidence. We determined that respondent's ethics transgressions warrant a one-year suspension.[1]

* * *

---

[1] For the sake of clarity, our findings follow the recitation of facts in each matter.

The Milbauer Matter (Count One)

On April 25, 1997 Sally Milbauer retained respondent to represent her father, Harold Milbauer ("Milbauer"), after a ceiling tile at St. Joseph's Hospital fell and landed on his head. Sally was the legal guardian of Milbauer, who had been declared incompetent. Sally had witnessed the event.

On June 20, 1997 Sally retained respondent in a second matter, after Milbauer was scalded while a home health aide bathed him. In both matters, the only fee agreement consisted of a single page of respondent's handwritten notes about the case, on which respondent had written "Contingent Fee – 1/3 of net." Sally and respondent signed both "agreements."

On March 25, 1998 respondent filed one lawsuit for both claims in Superior Court, Passaic County, captioned Harold Milbauer By His Guardian, Sally Milbauer vs. St. Joseph's Hospital and Medical Center, Health Force, and Hakim. After counsel for both defendants, Douglas Sanchez for the hospital and John Gonzo for Health Force and Hakim, served respondent with a request for damages, respondent wrote on each request "$1,000,000.00," added his signature and the date and returned them to counsel.

On November 16, 1998 respondent served Sally's handwritten interrogatory answers on both counsel. Respondent did not engage in reciprocal discovery. On March 29, 1999 Sanchez, on behalf of the hospital, filed a motion to compel more specific answers to interrogatories. On April 7, 1999 respondent submitted a "letter of opposition," objecting to

the motion, claiming that the information either had already been furnished or could have been obtained during depositions. On May 12, 1999 Sanchez served respondent with an April 30, 1999 order by Judge Susan Reisner, directing respondent to provide more specific answers to interrogatories. The order further provided that "all interrogatory answers shall be typed." On May 14, 1999 respondent served Sanchez with typed interrogatory answers.

Dr. Eugene Pugatch, a neurologist, examined Milbauer on April 15, 1999, two years after respondent had been retained. Seven months later, on November 16, 1999, Dr. Pugatch sent respondent a report indicating that he had not completed the examination because Milbauer had become unruly and disruptive. In Dr. Pugatch's opinion, Milbauer had sustained a "cerebral concussion and forehead laceration complicating a stable, residual stroke."

On August 25, 1999 Sanchez filed a motion to compel expert reports. Again, respondent submitted a "Letter of Opposition," objecting to the motion and asserting that "[w]e have already provided the medical reports and the discovery is long over and a trial date has been provided." He did not certify the contents of the letter. On September 24, 1999 Judge Reisner entered an order compelling the production of expert reports.

Also on September 24, 1999 Gonzo, on behalf of Health Force and Hakim, offered respondent $10,000 to settle the burn case. On September 27, 1999 Milbauer died. As seen below, respondent did not learn of Milbauer's death until at least early October, possibly mid-January. On September 28, 1999 respondent notified Sally of the settlement offer and

sent her a release, which she signed on September 29, 1999. The claim against Health Force and Hakim was dismissed by stipulation as a result of the settlement. Respondent received the settlement check on January 29, 2000 and disbursed the proceeds to Sally on February 24, 2000.

According to the OAE investigator, Sally told her that, "right after the funeral in the beginning of October," she had notified respondent that her father had died.[2] On December 29, 1999, unaware of Milbauer's death, Sanchez requested that respondent contact a neurologist to schedule an independent medical examination of Milbauer. There is no indication in the record that respondent replied to Sanchez' request.

The matter was called for trial and assigned to Judge Mary Margaret McVeigh on January 18, 2000. According to Sanchez, at a settlement conference scheduled on that date by Judge McVeigh respondent informed him that Milbauer had died. In turn, respondent testified that, about one week earlier, Sally had told him of Milbauer's death, and that he had immediately notified Sanchez. Although Sanchez could not recall a specific discussion with the judge, he testified that, on January 18, 2000, either he or respondent notified Judge McVeigh of Milbauer's death.

On January 24, 2000 the clerk's office notified respondent of a February 28, 2000 trial date for the *Milbauer* litigation against the hospital. At a conference conducted by

---

[2] According to the presenter's post-hearing brief submitted to the special master, Sally could not testify at the ethics hearing due to complications with a pregnancy and respondent objected to her testimony by phone or at an alternate location.

Judge W. Hunt Dumont on that date, Sanchez made it clear that his client's insurance carrier, Princeton Healthcare Insurance, Inc. ("Princeton"), took the position that this was a "no-pay" case. Judge Dumont notified respondent and Sanchez that the case was on "one-hour call status," meaning that counsel should be prepared to try the case on one hour's telephone notice. At that time, respondent told Sanchez that he could not go to trial and asked if the insurance company could make some kind of settlement offer. Sanchez contacted Princeton, which reiterated its "no-pay" position. Respondent did not disclose to Judge Dumont either that Milbauer had died or that he could not try the case.

On February 29, 2000 Judge Dumont's office telephoned respondent to notify him that the judge wanted him to go to the courthouse to discuss the case. At that time, respondent told Judge Dumont that he had no client, no doctor and no witnesses available for either that day or some future date. Judge Dumont testified at the ethics hearing that, at the February 28, 2000 conference, respondent had not informed him either that Milbauer had died or that he was not prepared to proceed with the trial. During the telephone conversation with respondent, Judge Dumont instructed him to appear in court, whereupon the case was dismissed with prejudice. According to Judge Dumont, he would have dismissed the case on February 28, 2000 if he had been aware of the circumstances and would have scheduled another case for trial on February 29, 2000. When asked whether respondent had been candid with him, Judge Dumont replied as follows: "There were

things that weren't said that probably should have been said under the circumstances, in order to have a candid conference with respect to resolution or trial preparedness."

Sanchez testified that Princeton's position throughout the litigation had consistently been "no-pay." He added that, because he had not been made aware of respondent's inability to proceed with the case, he had prepared for trial and had billed his client for those services.

After the case was dismissed, Sally told respondent that she wanted to obtain a second legal opinion and requested the return of her file. Respondent did not comply with her request. Sally told the OAE investigator that respondent had refused to turn over the file, had asked her why she was questioning his judgment and later had requested that she submit a letter stating that she had approved the dismissal of the suit.

For his part, respondent first contended that Sally was aware of the contingent fee arrangement because he had discussed it with her and because he had represented Milbauer in a "slip and fall" case in the early 1990s. He noted that she had been satisfied with the $10,000 settlement in the burn case. Respondent asserted that, although he had not itemized the expenses in a settlement statement, Sally was aware of them because he had contemporaneously provided copies of his letters to the clerk and to the sheriff, which listed the filing and service fees.

According to respondent, there were numerous problems with the litigation against the hospital. He claimed that Milbauer could not be examined by a physician because

Milbauer was incompetent and because there was a court order precluding the submission of expert reports after a date certain.

Respondent testified that he had not learned, until January 2000, that Milbauer had died. He stated that he sent Sally a copy of a notice scheduling the trial for January and that, about one week before the January trial date, Sally called him to say that her father had died the previous autumn. Respondent contended that he immediately notified Sanchez and asked him if the case could be settled. Sanchez reported that Princeton maintained its "no pay" position.

According to respondent, on January 18, 2000, when the case was conferenced by Judge McVeigh, he informed both Judge McVeigh and Judge Joseph Scancarella, the Civil Division presiding judge, of Milbauer's death. Therefore, he added, he saw no need to notify Judge Dumont. He further stated that he and Sanchez had decided not to amend the pleadings to substitute Milbauer's estate as the plaintiff.[3] Respondent argued that, because Milbauer was incompetent, he was not planning to call him as a witness at the trial and that, therefore, his death was not material to the case. According to respondent, his trial strategy, given the lack of expert reports and Milbauer's inability to communicate, would have been to present Milbauer as an "exhibit," so that the jury could observe his condition. Respondent stated that, once he learned of Milbauer's death, he realized that he had a very

---

[3] *R.*4:34-1 requires the successors or representatives of a deceased party to file a motion for substitution of parties.

weak case and tried to settle it, periodically decreasing his demands to "nuisance value." Contrary to the testimony of Judge Dumont and Sanchez, respondent denied that there had been a settlement conference on February 28, 2000. In fact, he testified, he never saw Judge Dumont on that day. He claimed that Judge Dumont had a long list of cases scheduled for that day and that the judge's secretary informed him and Sanchez that they were on "hour recall" and could leave. Respondent's testimony in this regard is inconsistent with both his answer to the ethics complaint and the factual stipulation, in which he agreed that Judge Dumont held a conference on February 28, 2000. Respondent offered no credible explanation for this inconsistency.

According to respondent, when he went to court on February 29, 2000, he told Judge Dumont that he could not proceed without an expert witness and without "the body of this poor guy who has passed away." After it was agreed that the lawsuit would be dismissed with prejudice, Sanchez prepared the order of dismissal, which was entered on April 4, 2000. The order recited that it appeared "that the plaintiff did not wish to proceed." Respondent contended that Sally understood the reason for the dismissal of the complaint and that she was satisfied with the result. He denied the OAE investigator's account of Sally's request for the return of the file and Sally's intention to seek a second opinion. Respondent contended that it was Sally's husband who had pressured her to obtain a second opinion and that she did not pursue the retrieval of the file or a second legal opinion.

The special master found lack of diligence, failure to prepare a written fee agreement, failure to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process, failure to disclose a material fact to a tribunal with knowledge that the tribunal may be misled by it and conduct prejudicial to the administration of justice. The special master declined to find gross neglect, failure to communicate with the client, failure to turn over a file to the client and conduct involving dishonesty, fraud, deceit or misrepresentation. The presenter withdrew the charge of failure to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client.

* * *

After a *de novo* review of the record, we found that respondent's fee agreement did not comply with *RPC* 1.5(c). Although he maintained that the fee agreement was sufficient, his handwritten notation, "Contingent Fee – 1/3 of net," did not satisfy the requirements of the rule. Regardless of prior representation, a contingent fee agreement must be in writing. *RPC* 1.5(c) provides as follows:

> A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether

such expenses are to be deducted before or after the contingent fee is calculated.

The "agreement" did not specify the expenses to be deducted or state whether they would be deducted before or after the calculation of the fee. Furthermore, when respondent disbursed the settlement funds to Sally, he failed to include the statement of settlement required by *RPC* 1.5(c).

Also, respondent displayed lack of diligence and gross neglect in this matter, in violation of *RPC* 1.3 and *RPC* 1.1(a). He did not engage in reciprocal discovery. Instead of filing a proper response to a motion to compel more specific answers to interrogatories, he submitted a "letter of opposition." The court granted the motion, directing respondent to submit typewritten answers. As seen below, this was the second instance in which Judge Reisner had ordered him to have interrogatory answers typed. After respondent's adversary filed a motion to compel expert reports, respondent again submitted a "letter of opposition" and, once again, the court granted the adversary's motion. Yet, respondent did not arrange for Milbauer's examination by a physician until almost two years after he had been retained and did not obtain the medical report until seven months after the examination. Although it is possible that the doctor was responsible for the delay, respondent's file contained no correspondence requesting the report. At this point, the court had entered an order barring expert reports. There is no indication that respondent filed a motion for relief from that order. He also failed to file a motion to substitute parties, after Milbauer's death.

Because Milbauer had suffered a stroke, was infirm, and was not a young man, respondent had an obligation to act more expeditiously.

Most disturbing was respondent's failure to notify the court of his client's death. Milbauer passed away on September 27, 1999. Respondent claimed that he had not learned of his client's death until mid-January, that he had immediately notified Sanchez of Milbauer's death and that, at the January 18, 2000 settlement conference, he had also notified Judge McVeigh and Judge Scancarella.

It is unquestionable, however, that respondent failed to notify Judge Dumont, on February 28, 2000, of Milbauer's passing. Judge Dumont testified that he learned of this event the next day, after the matter had already been called for trial. Despite overwhelming evidence to the contrary (including respondent's own answer and the stipulation of facts), respondent claimed that he had never seen Judge Dumont on February 28, 2000. He testified that he and Sanchez had stayed in the courthouse hallway and that the judge's secretary had come out to inform them that they were on "one-hour recall." Even if respondent did not see Judge Dumont face-to-face that day, he had an obligation to notify the judge of Milbauer's death, knowing that the judge was scheduling the case for trial. Yet, he remained silent. He told his adversary, Sanchez, that he could not try the case and again tried to obtain a settlement offer. Respondent's failure to provide this information to the court until the date of the trial prejudiced the administration of justice not only because it allowed the *Milbauer* suit to continue, but also because it delayed the start of another

case that could have been called in its place. Moreover, Sanchez' client was forced to pay for his legal services in preparing for a trial that could not take place. In this regard, respondent's conduct violated *RPC* 3.2, *RPC* 3.3(a)(5) and *RPC* 8.4(d).

Respondent also violated *RPC* 8.4(c) by failing to disclose to Judge Dumont, on February 28, 2000, either that his client had passed away or that he was not prepared to try the case. He intentionally failed to give the judge this information, in the desperate hope that the case would be settled. Respondent's argument that the information was not material because he had not intended to call Milbauer as a witness at the trial was at odds with his purported trial strategy to have the jury observe his client's condition.

In addition, in the burn case, it is unquestionable that respondent received and disbursed settlement funds after he knew of Milbauer's death. He received the settlement check on January 29, 2000 and disbursed the funds to himself and to Sally on February 24, 2000. As shown earlier, it is undisputed that respondent was aware of Milbauer's death by January 18, 2000. Respondent never notified his adversary, Gonzo, of Milbauer's death. It is conceivable that part of the settlement covered damages for the continuation of Milbauer's condition. Respondent's failure to disclose his client's death to Gonzo violated *RPC* 8.4(c).

We agreed, however, with the special master's dismissal of the charges of failure to communicate and failure to turn over the client's file. The OAE investigator's testimony that Sally did not file an appeal because respondent did not seem interested in her case was

based on hearsay and was rebutted by respondent. Similarly, there was no indication that respondent failed to keep Sally advised of the status of the matter or to reply to her requests for information, in violation of *RPC* 1.4(a). Although the OAE investigator testified that respondent had refused Sally's request to turn over her file, without Sally's direct testimony on the issue, we were unable to find, by clear and convincing evidence, that respondent violated *RPC* 1.16(d).

The Judge Diamond Matter (Count Two)

On January 5, 2000 respondent appeared at Judge Michael Diamond's courtroom for an early settlement panel ("ESP") conference. Apparently, respondent's adversary had not appeared yet. While Judge Diamond was on the bench, respondent entered his chambers. Judge Diamond's secretary, Susan Sanicki, had been talking to another attorney, when respondent interrupted her. Heather Suffin, Judge Diamond's law clerk, testified that respondent yelled at Sanicki to "get on the phone and get someone here." Suffin stated that respondent ranged from using an extremely loud voice to shrieking and yelling at Sanicki. According to Suffin, respondent placed himself between Sanicki and the door and taunted her by asking whether she was planning to leave the room. Suffin testified that, when she told respondent that there was no reason to be abusive to Sanicki, respondent yelled at her. At this point, Vincent Calix, a sheriff's officer, entered the room and instructed respondent

to leave. Suffin stated that both she and Sanicki were "unnerved" by the incident. Although respondent later apologized to Sanicki, he never apologized to Suffin.

Calix testified that he was in the courtroom when he heard, through the closed door, a loud commotion in the judge's chambers. Upon entering the chambers, Calix observed that Suffin and Sanicki were upset, at which time he escorted respondent out of the chambers. Pursuant to Judge Diamond's request, Calix brought respondent into the courtroom.

Judge Diamond testified that the incident actually started the day before, when respondent notified his chambers that he would not be appearing at the January 5, 2000 ESP conference. Judge Diamond instructed his secretary to direct respondent to appear. When Judge Diamond's secretary reported that respondent had replied, "I don't care what the judge says, I'm not taking part in the panel," respondent was informed that he would be sanctioned if he did not appear. According to Judge Diamond, on January 5, 2000 respondent disrupted the crowded courtroom, during another matter, by standing up and asking why he had to be there, if his adversary was absent. Judge Diamond directed respondent to use the telephone in his chambers to call his adversary. Judge Diamond stated that, after his staff informed him of the confrontation, he instructed Calix to bring respondent into the courtroom, where he "read him the riot act." Judge Diamond cautioned respondent that he would not tolerate disrespect toward his staff.

Judge Diamond submitted a January 13, 2000 memorandum about this incident to Assignment Judge Passero. In that memorandum, Judge Diamond mentioned that two years earlier, Judge Falcone, the assignment judge at the time, had asked for input on respondent's behavior. At that time, Judge Diamond had informed Judge Falcone about similar disrespectful conduct by respondent.

According to Judge Diamond, whenever respondent appeared before him, he generally was erratic and disruptive and his submissions were "poor, incomplete, sloppy, sometimes handwritten." He stated that it is not his policy to hold attorneys in contempt.

Officer Calix also testified that, within one year after the incident involving Judge Diamond's staff, respondent received a summons for smoking in a conference room next to Judge Diamond's chambers.

At the ethics hearing, respondent gave the following account of the events. After he received the notice of the January 5, 2000 ESP conference before Judge Diamond, he received a telephone call from Judge Gallipoli requiring him to appear at his courtroom at 9:00 a.m. on the same day. When respondent told Judge Gallipoli about his conference before Judge Diamond, Judge Gallipoli suggested that respondent inform Judge Diamond's chambers that respondent would appear before Judge Diamond at 11:00 a.m., instead of 9:00 a.m. Respondent explained that, although he ordinarily would have requested an adjournment of the ESP matter, Judge Diamond had stated that this particular case could not be adjourned. Respondent, thus, arranged to have the ESP matter scheduled for 11:00.

Upon his arrival at Judge Diamond's courtroom at 10:45, respondent discovered that his adversary was not there, although the adversary's client was present. When respondent asked Calix to notify the panel members that he was there, Calix informed him that they had left. At this point, the adversary's client began yelling at him. Respondent became concerned that Judge Diamond would sanction him for not appearing. He then proceeded to Judge Diamond's chambers and asked Sanicki to telephone the panel members. Respondent claimed that, although he may have raised his voice to Sanicki, he did not lose his temper. He called Sanicki later that day to apologize to her.

The special master declined to find that respondent failed to treat with courtesy and consideration all persons involved in the legal process and engaged in conduct prejudicial to the administration of justice.

* * *

By everyone's account, respondent caused a disruption, both in Judge Diamond's courtroom and in his chambers. His stated refusal, on January 4, 2000, to appear at the ESP conference the following day spurred a course of discourteous conduct to court personnel. Judge Diamond's secretary made several telephone calls to respondent to ensure his attendance the following day. Once he arrived, respondent interfered with the proceedings

in Judge Diamond's courtroom by complaining about the necessity for his appearance. When the judge offered respondent the use of his telephone in his chambers, the situation deteriorated further. Respondent yelled at the judge's secretary, Sanicki, and upset both her and the judge's law clerk, Suffin. The commotion was loud enough to be heard through a closed door by Officer Calix, who was in the courtroom at the time. Respondent's denial that he yelled at Sanicki is contradicted by the testimony of Suffin and Calix.

In sum, respondent mistreated Sanicki, "unnerving" both her and Suffin; disrupted Judge Diamond's court proceedings; necessitated the intervention of a sheriff's officer; and, by his behavior, compelled the judge to rebuke him in the courtroom. His conduct interfered with the activities of the judge and his staff, in violation of *RPC* 3.2 and *RPC* 8.4(d).

The Vincent Matter (Count Three)

On June 11, 1996 respondent was retained by Reno Vincent and two other individuals injured in an automobile accident. Respondent's clients were passengers in a vehicle owned by Dieu A. Piercin, which was involved in an accident with a vehicle owned and operated by Vincent Wasko. The contingent fee agreement consisted of one page of handwritten notes, on which respondent had written "Contingent Fee – 1/3 of net." The "agreement" did not specify how the expenses would be allocated among the three clients.

On September 5, 1997 respondent filed a complaint against Wasko on behalf of the passengers. On November 24, 1997 the Passaic County clerk's office received from respondent a "Supplement to the Complaint" dated September 3, 1997 (two days before the filing of the complaint), purporting to add as a defendant Piercin, the owner of the vehicle in which his clients were riding. Although Wasko was served with the complaint, respondent's attempt to serve Piercin was unsuccessful. Respondent made no further attempts to serve Piercin.

On December 30, 1997 an attorney, Aldo Russo, filed an answer on Wasko's behalf and served respondent with interrogatories. Respondent did not engage in reciprocal discovery.

On February 18, 1998 New Jersey Property Liability sent a letter advising one of respondent's clients, Reno, that Piercin's insurer, Home State Insurance Company ("Home"), was in bankruptcy. It enclosed Personal Injury Protection Collateral Source forms to be completed and returned. Respondent replied on March 24, 1998, by way of a handwritten note stating that plaintiffs had no insurance and enclosing the complaint and its "supplement."

On April 28, 1998, about one month later, respondent sent the following letter to an individual named Jim Raymond, an insurance adjuster for Home:

> Pursuant to settlement agreement reached for $5,000.00 per client, I am still awaiting your forms, which you indicated that you would send directly to me.

> Upon receipt of these forms, I will have them executed. I will report to the court that the matter has been tentatively settled with you and that the other defendants are therefore exonerated.[4]

At the bottom of the April 28, 1998 letter were the following handwritten notes: "Remailed – 6/14/98, 1/13/99, 6/1/99, 12/31/99, 3/15/00." On June 14, 1998 respondent sent Jim Raymond another request for forms. Also on April 28, 1998 respondent sent a letter to his three clients, advising them that they needed to meet with him to finalize the settlement that they had accepted. Neither Home nor respondent's clients replied to his letters. Respondent again wrote to Raymond, on January 13, 1999, requesting the forms and threatening to file a separate action to enforce the settlement if he did not receive the funds. A handwritten note on the bottom of the letter indicated that it had been remailed on June 1, 1999. Also on January 13, 1999 respondent sent a letter to his clients informing them that he could not finalize the settlement without their cooperation and that he would assume that they were abandoning their claims, if he did not hear from them within the next six months. A handwritten note on the bottom of the letter indicated that it had been remailed on June 1, 1999 and December 31, 1999. An August 14, 2000 letter from Home to the OAE revealed that (1) Jim Raymond had not worked for that company for the past two and one-half years; (2) Home was declared insolvent on September 9, 1997, was

---

[4] It is unclear why respondent indicated that he would notify the court that the "other defendants are therefore exonerated." Home was the insurance carrier for Piercin, the driver of the vehicle in which respondent's clients were riding. Presumably, the plaintiffs' claim against Wasko would remain viable. It is similarly unclear how respondent could settle a claim with a company in bankruptcy, without proceeding through the bankruptcy court.

placed in liquidation on October 23, 1997 and remains in liquidation; and (3) although Home's file reflected settlement discussions between Raymond and respondent, there was no documentation to support that a settlement had been reached.

Meanwhile, on September 11, 1998, Judge Reisner entered an order dismissing the complaint without prejudice, on motion by Wasko's attorney, Russo, based on failure to provide discovery. On December 21, 1998 Russo filed a motion to dismiss the complaint with prejudice, returnable on January 22, 1999. On January 27, 1999 Judge Reisner sent a letter to respondent stating that the motion had been adjourned because he had not provided the court with the required *R.*4:23-5(a)(2) affidavit, attesting to his efforts to either locate his clients or to notify them of the consequences of their continued failure to answer the interrogatories. Judge Reisner directed respondent to file the required affidavit by February 2, 1999 and to appear on the February 5, 1999 return date. Respondent did not file the affidavit. A February 22, 1999 order entered by Judge Reisner dismissed the complaint with prejudice, reciting that "plaintiff's counsel [] represented to the court that this case was settled with a non-moving defendant." The order stated that the motion had been submitted for disposition on the papers. The record does not indicate whether respondent appeared on February 5, 1999, as directed by Judge Reisner.

On February 5, 1999 Judge Reisner sent the following memorandum to Passaic County Civil Division Manager Georgina Calcines-Lowe:

> I am writing to bring to your attention two recent occasions on which Joseph Maffongelli, Esq. has failed to respond to motions to dismiss his

clients' complaints with prejudice for failure to answer interrogatories. In both cases, my law clerk called his office several times to remind him that under R.4:23-5, he was required to provide the court with an affidavit that he had notified his client or was unable to locate the client. In both cases, his eventual response was that the cases were settled. In each case, he stated that he had settled with a co-defendant (not the moving party). Apparently, in both cases, he settled with one defendant and then neglected to dismiss the lawsuit or otherwise advise the other defendant that the case was settled. He also failed to respond to the motions to dismiss and failed to promptly respond to my law clerk's inquiries. The most recent of these two cases is Vincent v. Wasko, L-6670-97.

Although I do not have case captions, there have also been several cases in which Mr. Maffongelli has 'responded' to motions by filing a copy of his adversary's papers with a hand-scrawled response written on it. He has also provided adversaries with responses to interrogatories which were handwritten rather than typed. As a result of seeing motions with these answers attached, I have on at least one occasion ordered Mr. Maffongelli to provide typed interrogatory answers in the future.

Judge Reisner testified at the ethics hearing that she prepared the above memorandum, pursuant to a direction from then-Assignment Judge Falcone, to bring to Calcines-Lowe's attention problems with respondent's practices. She stated that, after a 1999 meeting in which Judge Scancarella had instructed respondent to stop sending handwritten documents to court, respondent had continued to do so. As discussed above in the *Milbauer* matter, Judge Reisner had entered an April 30, 1999 order directing respondent to provide typed interrogatory answers. There were, thus, at least two such orders entered by Judge Reisner. Indeed, Judge Reisner testified that she had entered two orders directing respondent to provide typed interrogatory answers. Judge Reisner stated that she had entered the February 22, 1999 order dismissing the *Vincent v. Wasko* matter,

based on respondent's representation that he had settled the case with a non-moving defendant. Judge Reisner added that, (1) if there had been no such settlement, she would not have entered the order and (2) if respondent had been discussing settlement with an insurance carrier, not a non-moving defendant, then respondent had not been candid with her.

Respondent, in turn, contended that he had reached an agreement with Jim Raymond, of Home, settling the claim for $5,000 per client. He maintained that, although his clients accepted the settlement, they thereafter disappeared. Thus, respondent asserted, he had truthfully reported to the court that the matter had settled. On cross-examination, respondent testified that the "non-moving defendant" with whom he had settled the case was Home. He conceded, however, that, although Home was a party to the claim, it was not a party to the litigation.

The special master found gross neglect, lack of diligence, failure to prepare a written fee agreement, failure to expedite litigation and conduct prejudicial to the administration of justice. He did not find failure to communicate with a client or conduct involving dishonesty, fraud, deceit or misrepresentation.

* * *

In this matter, respondent again failed to prepare a written fee agreement, as required by *RPC* 1.5(c). As in the *Milbauer* matter, his handwritten notes containing the words "Contingent Fee – 1/3 of net" were insufficient to give his client the required notice under *RPC* 1.5(c).

Respondent was also guilty of gross neglect and a lack of diligence, in violation of *RPC* 1.1(a) and *RPC* 1.3. His attempt to supplement the complaint by adding Piercin as a defendant did not comport with *R.*4:9-4, which provides that pleadings may be supplemented by motion to set forth facts taking place after the initial pleading was filed. Respondent should have filed an amended pleading. Also, he did not engage in reciprocal discovery. Although he claimed that he settled the case with Raymond, an insurance adjuster with Home, no documentation supported that contention. While respondent was aware that Home was in bankruptcy, he did not file a proof of claim with the bankruptcy court. He apparently calendared this matter to take action in six-month intervals, as his letters to Home are dated June 14, 1998, January 13, 1999, June 1, 1999, December 31, 1999 and March 15, 2000. Thus, although respondent could have believed that he had settled the matter on April 28, 1998, as of March 15, 2000 he continued to request forms from the insurance company. By this time, the complaint had been dismissed for more than one year.

More seriously, respondent did not oppose Wasko's motion to dismiss the complaint with prejudice. Respondent did not comply with Judge Reisner's direction to file

an affidavit by February 2, 1999, presumably causing the hearing on the motion to be adjourned. His failure to reply to the motion to dismiss in the *Vincent* case (as well as in another case) prompted Judge Reisner to send a memorandum to Calcines-Lowe, expressing her concerns about respondent's practices. The memorandum was submitted at the direction of Judge Falcone, the assignment judge at that time. Respondent's failure to expedite the litigation violated *RPC* 3.2.

Respondent told Judge Reisner that he did not oppose the motion to dismiss the complaint with prejudice because he had settled the matter with a non-moving defendant. The only defendants in the case were Wasko, who had filed the motion to dismiss, and Piercin, who had not yet been served. Although respondent had been negotiating a settlement with Home, Piercin's insurer, Home was not a party to the case. In addition, as of February 1999, when respondent represented that he had settled the case, it had been almost one year since he had reached the alleged "settlement." Having not heard from Raymond or Home, he should have known that no settlement had taken place, particularly in light of Home's bankruptcy. We found, thus, that respondent misrepresented the status of the matter to Judge Reisner, in violation of *RPC* 8.4(c).

Respondent also violated *RPC* 8.4(d). His refusal to submit typed interrogatory answers caused Judge Reisner to enter two orders in two separate matters, requiring him to do so. Respondent's contention that he understood Judge Reisner's order to apply only to that particular case is not worthy of belief. In addition, because respondent failed to comply

with Judge Reisner's order to file an affidavit, she adjourned the hearing and wrote a letter directing him to submit the affidavit and appear in court. She also took the time to send a memorandum to Calcines-Lowe about respondent. Respondent's inaction, thus, caused prejudice to the administration of justice.

Lastly, the special master properly dismissed the charge that respondent failed to communicate with his clients. There was no clear and convincing evidence of unethical conduct in this regard, particularly in light of respondent's inability to locate his clients.

The Judge Scancarella Matter (Count Four)

On March 11, 1998 Calcines-Lowe, the Passaic County Civil Division Manager, returned certain documents to respondent and added the following: "Also, I take this opportunity to request that in the future, when you communicate with our Court, you do so in the more formal manner of writing a letter rather than marking up previous correspondence or utilizing the reverse side of documents." She sent a copy of the letter to Presiding Judge Joseph Scancarella. About one month later, on April 14, 1998, Judge Scancarella sent respondent a letter indicating that, despite Calcines-Lowe's March 11, 1998 letter, respondent continued to communicate with the court in an improper manner. Judge Scancarella informed respondent that he had instructed the civil division judges and staff to disregard respondent's "submissions that are not presented professionally in a

legible, formal document such as a typewritten letter or certification." Judge Scancarella concluded the letter as follows:

> It is in your long-standing capacity as a member of the Bar, and an officer of the Court, that I ask you to refrain from any future correspondence which violates the letter and spirit of the Rules, customs and standards of professional conduct. I trust we can count on your cooperation in this matter.

At the ethics hearing, Judge Scancarella testified that, because the court staff was confused by respondent's submissions, he directed respondent to comply with the court rules and instructed court staff to disregard any improper documents filed by respondent. The judge stated that respondent's submissions had been a topic of discussion during a meeting of the judges in Passaic County. At this time, Judge Falcone was the assignment judge.

On May 4, 1998, about two weeks after Judge Scancarella's April 14, 1998 letter, Calcines-Lowe returned several documents to respondent, including a note handwritten by respondent on a torn piece of paper. She also advised respondent that she had discussed with Judge Scancarella respondent's practice of deleting his name and address from envelopes sent to him by the court and using the same envelope to return mail to the court with "postage due." Calcines-Lowe notified respondent that Judge Scancarella wanted him to immediately desist from such practice. Her letter ended as follows:

> I am returning the enclosed to you since it is possible that these documents preceded Judge Scancarella's letter to you placing you on notice of the Court's requirements and expectations. However, in the future, all such improper communications to the Court by you will be disregarded and you will not receive notification of the Court's actions.

On May 6, 1998 respondent submitted a letter in lieu of a motion to the clerk's office, requesting the restoration of three complaints that had been dismissed. He did not submit any notices of motion and affidavits of service and did not indicate that copies had been submitted to his adversaries. He also submitted one order for all three cases, although they were separate and unrelated matters.

By letters dated May 20, 1998, October 28, 1998 and November 6, 1998 and two letters dated July 8, 1999, either the civil division manager or her staff returned submissions to respondent for various reasons, such as not including a certification in support of a motion and attempting to file documents in cases that had been dismissed and never restored.

Glenn DeBlasio, a team leader in the civil division in Passaic County, testified at the ethics hearing that, on occasion, respondent would send the same document to the clerk's office several times, even after it had been rejected. He confirmed that respondent also submitted handwritten documents to the clerk's office, sometimes written on notices sent by the clerk's office. DeBlasio asserted that respondent's filings caused the clerk's office staff to expend time and effort to research the status of the case, to review the action to be taken and to return the documents to respondent.

For his part, respondent contended that, although his handwritten submissions to the court were "untidy," they did not violate the court rules. He explained that, from 1995 through 1999, he had clerical problems and that, when he received a large number of

motions, he had to submit handwritten responses. According to respondent, after the clerk's office mistakenly began generating numerous notices of dismissal for lack of prosecution, a team leader from the clerk's office instructed him to hand-deliver replies to the clerk. On cross-examination, when respondent was asked whether the team leader had told him that it was permissible for him to submit handwritten opposition on the court-generated notice, which is printed on paper much smaller than the standard page size, respondent answered, "in effect, yes."

Respondent contended that, after he received several letters from Calcines-Lowe about his submissions, he replied to her in writing, resulting in an August 3, 1999 meeting with Judge Scancarella, Calcines-Lowe and Rashad Shabaka, the Assistant Civil Division Manager. Respondent claimed that Judge Scancarella told him at the meeting that, although he was right about the improper dismissal of cases, respondent should not "make trouble" for Calcines-Lowe. Respondent testified that Calcines-Lowe had prepared the April 14, 1998 letter that Judge Scancarella had sent to him and that the judge had not read the letter.

Respondent contended throughout his testimony that Calcines-Lowe was the source of his problems in Passaic County and that she had convinced Assignment Judge Passero to recruit other judges to complain about him. When the presenter pointed out to respondent that many of the complaints had arisen when Judge Falcone was the assignment judge, the following exchange took place:

Q. Do you have any reason to doubt that Judge Falcone actually began the process of collecting documents from the judges relating to your conduct?

A. Actively on his part?

Q. Yes.

A. I doubt that very much. [Calcines-Lowe] provided him with the material.

Q. To the extent that that's what other judges have testified here, it would be your view that their testimony was somehow wrong?

A. Well, it would be my view that they don't understand what the words 'actively gathering' is [sic].

* * *

Q. But based on some of the comments you've made, you seem to have suggested that the reason that we're here today is because you and the civil [division] manager didn't see eye-to-eye; and Judge Passero walked around actively seeking complaints from judges. Is that your view?

A. To a great extent, yes. That doesn't justify handwriting, sloppy submissions. Of course, it doesn't; but, yes, she found a willing ear.

[7T85-87][5]

The special master found failure to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process; knowing disobedience of an obligation under the rules of a tribunal; and conduct prejudicial to the administration of justice.

---

5 7T refers to the transcript of the February 14, 2002 hearing before the special master.

* * *

In this matter, respondent repeatedly failed to comply with directives from the court and the clerk's office. Although he blamed Calcines-Lowe for his troubles, claiming that she had found a "willing ear" in Judge Passero, it is obvious that his problems were much deeper than a "personality conflict" with clerk's office staff. He refused to acknowledge that the reason the prior assignment judge, Judge Falcone, had begun to gather information about him was that the judge had received so many complaints about his conduct. Respondent became an agenda item during judges' meetings, while Judge Falcone was the assignment judge. At the ethics hearing, six judges testified about respondent's actions. With his improperly-prepared submissions, respondent wreaked havoc throughout the courtrooms and court offices in Passaic County.

After Calcines-Lowe sent a March 11, 1998 letter reminding respondent to follow proper procedure, he continued to refuse to submit formal pleadings, relying instead on letters and handwritten documents. As a result, Judge Scancarella, the presiding judge of the civil division, sent him an April 14, 1998 letter, notifying him that he had instructed judges and staff to disregard his unprofessional submissions. Even after Judge Scancarella's April 14, 1998 letter, respondent failed to comply with the court rules. The record is replete with numerous instances in which he persisted in submitting (1) letters

instead of motions, (2) handwritten notes on documents prepared by others and (3) pleadings referring to more than one case.

Although respondent acknowledged that his submissions were "untidy," they were much more than that. They required court personnel to expend resources to decipher his submissions and to communicate with him regarding his cases. Glenn DeBlasio testified that clerk's office staff spent substantial time and effort to research the status of respondent's cases, as well as to review and return the documents to him. Furthermore, we rejected respondent's attempts to blame his shortcomings on clerical problems. He engaged in this practice for more than three years.

Respondent's failure to comply with the rules and directives of the court violated *RPC* 3.2, *RPC* 3.4(c) and *RPC* 8.4(d).

The Cerretta Matter (Count Five)

On May 26, 1995 respondent was retained to represent Anthony Cerretta, a minor who was struck by a car while riding his bicycle, and Ann Cerretta, his mother, who came upon the accident scene and saw her injured son. The written fee agreement, consisting of respondent's handwritten notes on which he had scribbled "Contingent Fee – Supreme Court Rule," was signed by Anthony's father, Louis Cerretta, and respondent. Respondent

did not obtain the signature of his client, Ann Cerretta, claiming that she had given her husband permission to sign her name.

On November 8, 1995 United Services Automobile Association ("USAA"), the insurance carrier for the driver, Tony Cohen, offered $3,500 to settle Anthony's claim. More than five months later, on April 18, 1996, respondent notified USAA that he was awaiting a reasonable offer for Anthony. On April 26, 1996 USAA replied that Anthony's claim could not be reevaluated without all medical bills, reports and records. On June 26, 1996, having received no reply from respondent, USAA again requested medical information for Anthony. On July 31, 1996 respondent requested a reasonable offer from USAA, based on the medical information already provided. On August 8, 1996 USAA offered $7,500 for Anthony's claim. On September 25, 1996 USAA requested a reply to its settlement offer. By letter of October 7, 1996 respondent sent additional medical records to USAA and again requested a reasonable settlement. On November 12, 1996 USAA requested that Anthony schedule and submit to an independent medical examination. On December 4, 1996 respondent again asked USAA for a reasonable offer.

On April 4, 1997 respondent advised Louis that the statute of limitations for Ann's claim would be expiring shortly. On April 21, 1997 respondent filed suit on behalf of the Cerrettas against the driver, Cohen. On May 19, 1997 the clerk's office received from respondent a "Supplement to Complaint" dated April 23, 1997, purporting to add the Cerrettas' carrier, Prudential Property and Casualty Insurance Company ("Prudential") as a

defendant for uninsured/underinsured motorist coverage. Respondent served Prudential on June 16, 1997 by certified mail. Cohen was served with the complaint by the sheriff's office on June 26, 1997. On October 27, 1997 respondent filed a request to enter default against Cohen, certifying that Cohen had been served in June and had not filed an answer.

On January 30, 1998 the clerk's office sent respondent a notice that the complaint would be dismissed on April 24, 1998, unless he submitted an affidavit as to why the case should not be dismissed. In reply, on February 3, 1998 respondent returned the notice with the following handwritten note on it: "Default notice is typed. Default entered and proof hearing requested. Do not dismiss. I so certify." On April 24, 1998 the case was dismissed without prejudice for lack of prosecution. On May 6, 1998 respondent sent a letter asking the clerk to restore three cases, including *Cerretta*. He also asked the clerk to consider the letter as a motion and submitted one form of order for all three cases. The case was not reinstated.

On July 20, 1998 USAA sent to respondent a copy of the results of the independent medical examination and offered $10,000 to settle Anthony's claim. Six months later, on January 21, 1999, respondent sent the following letter to Louis:

> Please be advised that the insurance company has now raised their offer to $10,000.00. I need some school records indicating that [Anthony] could not take gym for three years. I also need some of the records about the psychological treatment he received.
>
> Finally, I need something regarding Ann because I have nothing on that.

On April 12, 1999 respondent made the following handwritten note on a letter to USAA: "Still wants gym & psych records $15,000 without them." On May 5, 1999 respondent forwarded Ann's medical information to USAA. Thus, at the time that respondent recorded USAA's $15,000 offer, he had not sent any information about Ann. On June 22, 1999 respondent made a handwritten note on the May 5, 1999 letter, indicating that USAA had offered a total settlement package of $21,000.

On June 25, 1999 respondent sent another letter to the clerk's office, seeking to have three matters, including *Cerretta*, restored to the active list. By letter dated July 8, 1999 Calcines-Lowe notified respondent that *Cerretta* had been dismissed for his failure to "follow through the service of a timely filed request to enter default." She also stated that separate motions for each case would be required and that her staff would disregard further correspondence from him if it was unclear and not in compliance with the court rules.

Respondent did not file a motion to reinstate the *Cerretta* complaint. Instead, he sent the following July 14, 1999 letter to the clerk:

> I now call your attention to Rivera decided by the Appellate Division, at 321 NJ Super. page 340 which fully spells out the procedure for the dismissal list and settles the matter about arbitrary dismissal.
>
> In addition, I call your attention to Flagg at 321 NJ Super. page 257 with note, which defines the position of the clerk.
>
> I trust that you will now correct the situation regarding calling our procedure into question.
>
> My best to the family.

The record does not indicate whether the matter was reinstated. On August 30, 1999, more than two months after receiving USAA's June 22, 1999 settlement offer, respondent notified the Cerrettas of the offer, enclosing a release for Anthony for $5,000 and a release for Ann for $16,000. On November 16, 1999 respondent disbursed the settlement proceeds as follows:

Anthony		Ann	
Settlement	$5,000	Settlement	$16,000
Less 1/4 fee	1,250	Less 1/3 fee	5,269
		Less costs	193
Balance	$3,750	Balance	$10,538

The OAE investigator testified that, because respondent allocated a larger amount of the settlement to Ann, his fee was increased by $833. The OAE investigator asserted that, according to Jackie Burns, the USAA insurance adjuster, Ann's medical records were not substantial because she had not completed her medical treatment. According to the OAE investigator, Burns told her that, because it did not matter to USAA how the money was split, she had left the division of the settlement proceeds up to respondent. The investigator added that Burns was anxious to settle the case because respondent was very unpleasant and had a history of bullying adjusters.

For his part, respondent claimed that all of the insurance adjuster's offers to settle the case included both Anthony's and Ann's claims. He asserted that, because Anthony was able to attend physical education classes, the value of his claim had been reduced and that Ann's claim was not valuable due to the verbal threshold. Indeed, respondent testified

that "if I were defending [her] case, I wouldn't have paid a dime." Upon questioning by the special master, respondent conceded that, if they had gone to trial, Ann would not have a cognizable claim because she did not witness the accident.

According to respondent, he discussed the allocation of the settlement proceeds with the Cerrettas, who left that determination up to him. Respondent contended that years ago he had represented the Cerrettas' older son, who was required to testify at a "friendly" hearing to confirm the settlement. Respondent stated that he wanted to resolve the matter without Anthony's appearance in court. He, therefore, attributed $5,000 of the settlement to Anthony's claim, the maximum amount the insurance carrier would pay without requiring a "friendly" hearing. This testimony contradicted that of the OAE investigator, who testified that, according to the insurance adjuster, Burns, she had given respondent a lump sum and would not require a "friendly" hearing no matter who the settlement was apportioned. The following exchange took place between respondent and the special master at the ethics hearing:

> A. Always lurking in the back of my mind is the Brady case: That without a friendly, the door is never shut completely.
>
> Q. And are you suggesting that you did that on purpose to keep the door open?
>
> A. Well, no, no. In this instance, I did it, because I wanted to maximize the amount without the son having to be brought to a friendly; but that always is in the back of my mind.

Respondent further contended that, when he explained to Louis that his fee for representing Anthony would be twenty-five percent, Louis indicated that he recalled the fee arrangement from respondent's prior representation of his older son. Respondent claimed that he maximized Anthony's share by allocating all of the costs ($193) to Ann's claims and that he had paid more than $300 out of his own pocket for medical reports.

In turn, Louis denied having had any discussion with respondent about the fee, testifying that he was not aware that there were different percentages for fees allowed, when the client is a minor. According to Louis, respondent did not give him either a copy of the fee agreement or a copy of the court rule addressing fees, adding that he trusted respondent unconditionally and would have signed anything presented by respondent. Louis testified that respondent never told him that he did not want Anthony to testify in court and that, by allocating less money to Anthony's claim, they could avoid Anthony's court appearance. Louis related that respondent relayed settlement offers as a "lump sum" and did not inform him about the division of the settlement funds between his wife and his son. Louis stated that, although he was dissatisfied with the amount of the settlement, he continued to like and trust respondent. He asserted that respondent would not intentionally allocate the settlement in a manner that increased his fee.

As noted above, respondent filed a "supplement to complaint" to include Prudential, the Cerretta's carrier, if it became necessary to raise an underinsured claim. Respondent served Prudential by mail. Prudential never filed an answer. Respondent testified that he

took no further action against Prudential because the case settled within the policy limits of USAA. When asked whether he had notified the court and dismissed the complaint against Prudential, respondent replied that there was no need to do so.

The special master found failure to explain a matter to a client to permit the client to make informed decisions, failure to prepare a written fee agreement and conflict of interest. He did not find failure to keep a client informed of the status of a matter, failure to expedite litigation, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice. He did not address the charges that respondent exhibited gross neglect and lack of diligence.

* * *

Although respondent ultimately obtained a settlement in the *Cerretta* matter, he was guilty of gross neglect and lack of diligence, in violation of *RPC* 1.1(a) and *RPC* 1.3. He allowed the matter to be dismissed for lack of prosecution. Instead of following the court rules and the explicit directions of the clerk's office, he instigated a dispute, to the detriment of his client. The January 30, 1998 notice from the clerk instructed respondent to submit an affidavit to avoid the dismissal of the complaint. Respondent did not submit an affidavit. He returned the dismissal notice with a handwritten note asking the clerk not to dismiss the complaint. After the case was dismissed, he failed to file a motion to restore it.

Instead, he sent a letter asking the clerk to reinstate three cases, including *Cerretta*, and submitted one form of order for all three cases.

After respondent sent yet another letter, Calcines-Lowe reminded him that a motion was required. Even then respondent refused to file the motion. He sent a letter disputing the clerk's authority to dismiss cases, citing *Rivera v. Atl. Coast Rehab. Center*, 321 *N.J. Super.* 340 (App.Div. 1999), and *Flagg v. Township of Hazlet*, 321 *N.J. Super* 256 (App.Div. 1999). In *Rivera*, a dismissal notice was sent erroneously, the complaint was dismissed and the plaintiff's motion to reinstate the complaint was denied. The Appellate Division ruled that, although the motion should have been granted, "[t]he erroneous issuance of the notice of dismissal and the consequent erroneous entry of the order of dismissal do not, of course, justify plaintiff's attorney's failure to respond to the dismissal notice." *Rivera*, thus, confirms that the proper procedure upon receipt of a dismissal notice, even an erroneous one, is to file a motion to be decided by a judge, not to correspond with the clerk's office. Similarly, *Flagg* is of no application here. In that case, the clerk rejected as untimely a motion for a trial *de novo*, following an arbitration proceeding. Although the Appellate Division affirmed the dismissal, it held that the "clerk has no role in determining the timeliness of a party's pleadings." Here, the clerk rejected respondent's submission not because it was untimely, but because it did not comply with the court rules.

Respondent also neglected this matter with respect to settlement negotiations. He waited from November 8, 1995 to April 18, 1996, more than five months, to reply to

USAA's first settlement offer. USAA had to send to respondent several additional requests for medical information or for a response to its settlement offers. Respondent waited six months, from July 20, 1998 to January 21, 1999, to convey USAA's $10,000 settlement offer to the Cerrettas. Although he claimed that he had notified his clients by telephone during that period, his January 21, 1999 letter stated, "Please be advised that the insurance company has now raised their offer to $10,000.00." It is obvious that respondent was notifying his clients of this offer for the first time, not confirming a prior telephone conversation. Respondent's failure to keep his clients informed of the status of the matter also violated *RPC* 1.4(a).

In addition, as mentioned above, respondent filed a "supplement to complaint," seeking to add Prudential as a defendant under his client's underinsured insurance policy provision. He then served Prudential by certified mail. Prudential did not file an answer. Respondent, thus, would have to obtain personal service in order to proceed against Prudential. He did not take any further action against Prudential, arguing that, because the matter had settled within USAA's policy limits, there was no need to proceed against Prudential. Respondent could not have known, in June 1997, when he served Prudential by certified mail, that USAA would settle the matter within policy limits more than two years later. Moreover, respondent never filed a dismissal or notified the clerk's office that he was not proceeding against Prudential.

By permitting the complaint to be dismissed and failing to restore it, by failing to relay settlement offers promptly, and by attempting to add Prudential as a party and then taking no further action against it, respondent violated *RPC* 1.1(a) and *RPC* 1.3.

Respondent also failed to explain to the Cerrettas the basis of his fee, in violation of *RPC* 1.5(c). Louis Cerretta testified that he did not know what respondent's fee would be, that he was unaware that a different percentage applied in contingent fee cases when the clients are minors and that respondent never discussed the court rule regarding fees or gave him a copy of the court rule.

More significantly, respondent failed to discuss with the Cerrettas the advisability of proceeding with a "friendly" hearing. Louis contradicted respondent's testimony that they wished to avoid a "friendly" hearing. Louis testified that respondent never discussed the issue with him and that, if he had, he would have told respondent that he was willing to have his son appear in court if that meant a larger settlement. Respondent unilaterally made that decision. Moreover, respondent's claim that $5,000 was the maximum that the insurance company would pay without requiring a hearing was contradicted by the OAE investigator's testimony that, according to Burns, the division of the settlement funds did not matter to USAA.

In his brief to us, respondent argued that he intentionally avoided a "friendly" hearing so that Anthony could file a future lawsuit. Citing *Coffer v. Royal Globe Ins. Co.*, 214 *N.J. Super.* 374 (App.Div. 1986), *Riemer v. St. Clare's Riverside Med. Ctr.*, 300 *N.J*

Super. 101 (App.Div. 1997), and *Moscatello ex rel. Moscatello v. UMDNJ*, 342 *N.J. Super* 351 (App.Div. 2001), respondent correctly argued that, unless a settlement involving a minor plaintiff is confirmed by a court, the plaintiff may seek further damages upon reaching the age of majority. At the ethics hearing, however, when asked whether he intentionally avoided a "friendly" hearing in order to "keep the door open," respondent replied that he wanted "to maximize the amount without the son having to be brought to a friendly; but that always is in the back of my mind." Respondent's brief to the special master did not argue that his purpose in avoiding a "friendly" hearing was to maintain Anthony's right to seek additional damages in the future. He raised this point for the first time in his brief to us. Moreover, even if this had been respondent's intention, he never discussed it with his clients, who had the right and responsibility to decide that issue.

Respondent also never discussed with the Cerrettas the allocation of the settlement funds. Louis testified that respondent advised him of the settlement offers as a lump sum. It was respondent, not the Cerrettas, who decided how to divide the settlement funds. Respondent's conduct in this regard violated *RPC* 1.4(b).

The special master found that respondent engaged in a conflict of interest by representing a client when that representation was materially limited by his responsibility to another client. He noted that, although USAA had offered $15,000 for Anthony's claim, respondent divided the $21,000 settlement by allocating only $5,000 to Anthony and $16,000 to Ann. This allocation is at odds with respondent's testimony that Ann did not

have a cognizable claim and that he would not have paid a "dime" to settle her case. The potential for a conflict between Ann and Anthony's interests arose when respondent determined on his own how to divide the settlement. There was, however, no suggestion in the record that Ann failed to maintain all of the funds for Anthony. Another potential conflict arose as between respondent and his clients when he received a higher fee by allocating more funds to Ann than to Anthony. There was no suggestion, however, that respondent intentionally did so to obtain a higher fee. It appears that this was an incidental result. We found no clear and convincing evidence that respondent engaged in a conflict of interest

With respect to the charge that respondent failed to expedite litigation, his insistence on sending letters to the clerk and his repeated refusal to file a formal motion to reinstate the complaint resulted in needless delays in this matter, in violation of *RPC* 3.2. Respondent caused clerk's office staff to expend resources by rejecting his improper submissions and repeatedly explaining procedures to him. In this context, respondent violated *RPC* 8.4(d).

The special master properly dismissed the charge of a violation of 8.4(c). This charge was apparently based on respondent's unilateral allocation of the settlement proceeds and his receipt of a higher fee. While other rules were violated by this allocation as discussed above, it cannot be said that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Guillaume Matter (Count Six)

On August 15, 1997 respondent was retained by Gary Guillaume and three others, after they were injured while riding in a car driven by Marie Carrie and owned by Marie Levin. The driver of the other car was Surpis L. Cidny. Respondent's fee agreement again consisted of his handwritten notes, on which he wrote: "Contingent Fee – 1/3 of net."

On November 26, 1997 respondent filed a complaint on behalf of his four clients against Carrie, Levin, Cidny and Allstate Insurance Company ("Allstate"). The complaint recited that Allstate was named as a defendant because it insured both vehicles and refused to negotiate settlement. Although Allstate was served with the complaint, the three individual defendants were not.

On April 9, 1998 respondent and Gordon Graber, Allstate's attorney, signed a stipulation of dismissal with prejudice, dismissing the matter as to Allstate. The stipulation contained respondent's handwritten note: "Issue joined as to insureds." On July 2, 1998 the clerk's office notified respondent that the matter would be dismissed on July 31, 1998 for lack of prosecution. On July 10, 1998 respondent asked the clerk to remove the case from the dismissal list, enclosing a request to enter default and a certification stating that "[s]ervice of the Summons and Complaint was effected upon the defendants, Marie Carrie, Marie Levin, Supis [sic] Cidny. Process was acknowledged and served by stipulation which was signed by both attorneys on April 9, 1998. Please enter default and return papers."

On October 29, 1998 the clerk sent respondent a second notice, stating that the case would be dismissed on December 11, 1998. Respondent replied on November 1, 1998, with a handwritten note indicating that default had been entered and that he would await a proof hearing. The complaint was dismissed, nevertheless.

At some point thereafter, respondent sent to the clerk's office a copy of his previous opposition to the notice of dismissal and again requested that the case be restored.

On July 8, 1999 Calcines-Lowe sent the following letter to respondent:

> Again, you are attempting to circumvent the Rules of Court in your effort to process the captioned matter. This case was dismissed because there was **no successful service upon the individual defendants** and you had filed a Stipulation of Dismissal in favor of the only party whose service was successful, Allstate Insurance Co.
>
> The mere fact that there was a handwritten note on the Stipulation to the effect that 'issue joined as to insureds' is not sufficient to indicate successful service so as to permit default to be entered against them.
>
> You further indicate in a P.S. that 'Bill has tried to file an answer already. By copy of this letter to him, I will ask him to send it again.' I wish to remind you that the proper procedure to reinstate a case once it has been dismissed, is to file a formal Motion with the Court to request the matter be restored. This matter was, **and remains**, dismissed until a Motion to restore is filed and decided by a Civil Judge.
>
> This is not the first time that you attempt to restore a matter without the benefit of filing a formal Notice of Motion. As we have indicated to you in the past, **in** [sic] **numerous occasions**, that [sic] we will disregard any future correspondence from you that does not comply with the proper procedure under the Court Rules. We request that you cooperate to eliminate the many hours spent by staff, and myself, correcting procedural errors in the majority of your cases. [Original emphasis].

In reply, respondent sent the July 14, 1999 letter mentioned in the *Cerretta* matter above, in which he argued that, under *Rivera* and *Flagg*, the clerk did not have the authority to dismiss cases. That letter included the following statement with respect to the *Guillaume* matter: "Mr. Kennedy and I entered into a stipulation regarding joinder of issue, which is perfectly permissible under the Rules."[6]

About three months later, on November 17, 1999, respondent sent Calcines-Lowe another letter seeking the reinstatement of the case and indicating that "Mr. Kennedy is still trying to file an answer." Respondent sent a copy of this letter to William Kennedy, on which he noted, "Please file the answer now." The clerk's office did not reply.

Seven months later, on June 15, 2000, William Kennedy, counsel for Allstate, informed respondent that the case had been dismissed on December 11, 1998, adding the following: "You have not made any motion to restore the matter or have you, according to our information, served any of the defendants."

On June 20, 2000 respondent filed a formal motion to restore the complaint, which was granted on July 21, 2000. Respondent's file contained no documentation showing that he had attempted to serve the individual defendants. Although the OAE investigator testified that respondent indicated to her that an arbitration was pending, clerk's office staff told her that the matter could not proceed because the defendants had never been served.

---

6 As noted above, Gordon Graber signed the stipulation on Allstate's behalf.

At the ethics hearing, respondent testified that he could not locate the individual defendants and that, although he did not know whether all three defendants were insured by Allstate, its attorney, Gordon Graber, agreed that he would accept service on their behalf, in exchange for dismissing the complaint against Allstate. Respondent conceded that the better practice would have been to submit a notice of voluntary dismissal as to Allstate and an acknowledgment of service as to the three individual defendants. Instead, respondent submitted a stipulation of dismissal with the handwritten words "Issue joined as to insureds," expecting the clerk's office to understand that Allstate was accepting service on behalf of the three individual defendants. Respondent testified that "it seemed to be expeditious to do it in this fashion," despite the fact that the clerk's office rejected the submission. Respondent criticized Calcines-Lowe's determination to return the stipulation, testifying that she had no such authority. According to respondent, his clients disappeared and, ultimately, the case was dismissed.

The special master found gross neglect, lack of diligence, failure to prepare a written fee agreement, failure to expedite litigation and conduct prejudicial to the administration of justice. He declined to find failure to communicate and conflict of interest.

* * *

Respondent's refusal to follow proper procedures operated to his clients' detriment and wasted judicial resources. Respondent and Allstate's attorney, Graber, entered into a stipulation of dismissal, on which respondent had written "Issue joined as to insureds." According to respondent, the clerk's office should have recognized that the language added to the stipulation meant that Allstate's attorney had acknowledged service of the summons and complaint on behalf of the other three defendants. Instead, the clerk's office notified respondent on two occasions that the case would be dismissed for lack of prosecution. After the case was dismissed, instead of filing a motion for reinstatement, respondent submitted his prior opposition to the dismissal and asked that the case be reinstated. When the civil division manager wrote a lengthy letter explaining to respondent the necessity of filing a motion, respondent sent another letter to her, claiming that he and his adversary had entered into a stipulation regarding joinder. It is obvious that Kennedy did not share respondent's view of the stipulation because he reminded respondent that respondent had not moved to restore the matter and had not served the defendants. Six months later, respondent finally filed a motion to reinstate the complaint. After the motion was granted, he took no action to serve the defendants.

Respondent's failure to timely and promptly prosecute the complaint constituted gross neglect, lack of diligence, failure to expedite litigation and conduct prejudicial to the administration of justice, all in violation of *RPC* 1.1(a), *RPC* 1.3, *RPC* 3.2 and *RPC* 8.4(d). As in the *Cerretta* matter, respondent refused to follow proper procedure, even when

specifically instructed to do so by the clerk's office. His insistence on proceeding by way of letter, instead of formal pleadings, resulted in delays in the processing of the case, to the disadvantage of the client and the clerk's office. Even after he conceded that he should have submitted a notice of voluntary dismissal as to Allstate and that his adversary should have submitted an acknowledgment of service, he continued to maintain that Calcines-Lowe did not have the authority to reject his documents.

In addition, for the same reasons discussed in the matters above, respondent's fee "agreement" violated *RPC* 1.5(c).

The special master properly dismissed the charges that respondent violated *RPC* 1.4(a) and (b) and *RPC* 1.7(b). There was no clear and convincing evidence that respondent failed to communicate with his clients or engaged in a conflict of interest.

The Baptiste Matter (Count Seven)

On January 3, 1996 respondent was retained by Micho Jean Baptiste and three passengers in his car, which was involved in an accident with a car owned by Hector Lopez. Respondent's one page handwritten fee agreement, stating "Contingent Fee – 1/3 of net," was signed by the clients and respondent.

On May 15, 1996 Lopez' insurer denied liability because the car had been stolen and was operated by an unknown driver. On May 24, 1996 respondent contacted Baptiste's insurer, Maryland Insurance Group. Zurich Personal Insurance contacted respondent on

February 20, 1997, indicating that it was Baptiste's insurer and that it was investigating whether coverage was in effect on the date of the accident.

On May 15, 1997 respondent filed a complaint on behalf of the four clients against Maryland Casualty Group ("Maryland"), State Farm Indemnity Company ("State Farm"), American Home Assurance Company ("American Home") and Hector Lopez, arguing that all the above insurance companies insured the plaintiffs through uninsured motorist provisions. On June 5, 1997 respondent served Maryland at its Baltimore, Maryland, office and American Home by certified mail. State Farm was served by the sheriff's office on June 11, 1997.

On September 30, 1997 respondent filed a request to enter default against the insurance company defendants. On November 6, 1997 the clerk's office forwarded a notice of dismissal for lack of prosecution. Respondent returned the notice to the clerk with the following handwritten note: "Do not dismiss – we asked for default & proof hearing on 9/30/97. I so certify."

On December 22, 1997 Maryland's counsel filed a motion to dismiss the complaint, contending that Maryland had a Parsippany office and that service by mail was insufficient. The return date of the motion was January 2, 1998 and oral argument was requested. On December 26, 1997 respondent submitted a handwritten note stating that he had no typist over the holiday weekend and that an immediate response was necessary. Attached to the note was respondent's handwritten reply to the motion: "This is a policy action. Process

was served. Please have motion dismissed. I will not be available for oral argument. I rely on this submission and entire record." On January 9, 1998 the complaint was dismissed for insufficient service of process.

Although respondent never filed a motion to reinstate the complaint, he arranged for Maryland to be served on February 20, 1998 by the sheriff's office. On May 1, 1998 respondent submitted to the clerk's office a request to enter default against Maryland and to schedule a proof hearing. Although the clerk's office staff returned the document to respondent with directions not to resubmit the request to enter default, respondent forwarded the same request to enter default on July 2, 1999, December 1, 1999, January 25, 2000 and July 15, 2000.

At the ethics hearing, when the presenter questioned respondent about his failure to serve Maryland, the following exchange took place:

> A. Besides, they weren't really culpable here. This complaint names all three carriers.
>
> Q. Whether they're culpable or not, if you name someone in a complaint, you have to serve them. Is that correct?
>
> A. No, you don't have to serve them, no, not at all. . . . It depends whether or not you have to stop the statute from running at a certain point. That's all. There's no rule saying: Once you file, you have to serve. There isn't.
>
> Q. Mr. Maffongelli, can we agree that if you don't have a claim against a party, it would be frivolous to sue them?
>
> A. (No response.)

Q. Correct?

A. Well, --

Q. So you have to have at least [a] belief that you have a viable claim of some sort before you actually take the time to sue someone?

A. Circumstances can change, as you go down the line. . . . Now, when it becomes obvious that they are not culpable, if you don't – if you haven't served them, then you don't. You don't put them to any expense.

[6T221-223][7]

In addition, when the presenter asked respondent about his failure to file a motion to reinstate the complaint, respondent replied as follows:

Q. [Y]ou never filed a motion to reinstate the complaint, correct?

A. Well, obviously I served them.

Q. I understand that you served them. What I'm getting at is: Did you ever make a formal motion to reinstate the complaint?

A. I don't recall. I don't know why I would.

Q. Well, let me ask you this. Did you, instead, file requests for default against Maryland Casualty on at least four or five occasions?

A. After they were served properly, yes.

Q. But before you sought to default Maryland Casualty, would it be fair to say, you never had the case reinstated?

A. Well, there was no need to. There was no need to. . . .

---

[7] 6T refers to the transcript of the February 12, 2002 hearing before the special master.

Q. Mr. Maffongelli, is it your testimony that you would be entitled to a default against Maryland Casualty if your case had never been reinstated against them?

A. If the service was properly made, yes.
[6T230-231]

The special master found gross neglect, lack of diligence, failure to prepare a written fee agreement and failure to expedite litigation. He did not find failure to communicate or conflict of interest and did not address the charge of a violation of conduct prejudicial to the administration of justice.

* * *

Respondent's testimony in this matter raised concerns about his competency to practice law. He served Maryland by certified mail sent out of state. After the complaint was dismissed for insufficient service of process on Maryland's motion, respondent served Maryland by personal service. He never moved to reinstate the complaint, however, and the testimony above shows that he does not understand that no action can be taken against a party after the complaint is dismissed, unless and until it is restored. Similarly, he expressed the outlandish view that no rule requires a plaintiff to serve a defendant after a complaint is filed.

Also, respondent repeatedly returned the same request to enter default, after it had been rejected by the clerk's office. He submitted the same document on May 4, 1998, May

19, 1998, May 28, 1998 and June 12, 1998, after he received Judge Scancarella's April 14, 1998 letter cautioning him against such practice.

Respondent's failure to obtain proper service against a party while the complaint was pending constituted gross neglect, lack of diligence, failure to expedite litigation and conduct prejudicial to the administration of justice, in violation of *RPC* 1.1(a), *RPC* 1.3, *RPC* 3.2 and *RPC* 8.4(d). Once again, respondent's fee agreement did not comply with *RPC* 1.5(b).

The special master properly dismissed the charged violations of *RPC* 1.4(a) and (b) and *RPC* 1.7(b) as there was no clear and convincing evidence that respondent failed to communicate with his clients or engaged in a conflict of interest.

* * *

The Smith Matter (Count Eight)

On November 7, 1996 Pierre Paul and Connie Smith, individually and on behalf of her minor child, Diondrea Smith, retained respondent after they were involved in a car accident as passengers in a vehicle owned by Godellin Dessaline and operated by Mian Amoakon. The second car in the accident was owned by May Ali and operated by William Healy. The clients signed a handwritten fee agreement providing "[c]ontingent Fee 1/3 of net for adults – 25% for minor."

On April 14, 1998 respondent filed suit on behalf of the three passengers against Dessaline, Amoakon, Ali and Healy. Almost six months later, on October 8, 1998, the clerk's office sent respondent a notice of dismissal for lack of prosecution. By handwritten letter dated October 11, 1998, respondent asked the clerk not to dismiss the complaint, stating "[n]ew address found and process sent on 10/5/98." Healy was served on October 13, 1998. On November 30, 1998 an answer was filed on behalf of Healy and Mali. Respondent's file contained no documentation showing that respondent engaged in reciprocal discovery.

On March 24, 1999 respondent moved for substituted service on unserved defendants Dessaline and Amoakon. After Judge McVeigh denied the motion on April 16, 1999, respondent sent him an April 23, 1999 letter asking for reconsideration of the motion. On June 2, 1999 Judge McVeigh denied the motion. On June 4, 1999 respondent filed a motion for substituted service on defendants' insurer, Allstate. After that motion was granted, respondent served Allstate by certified mail on July 14, 1999. Allstate did not file an answer.

On August 23, 1999 respondent filed a request to enter default against Dessaline and Amoakon, stating in a certification that service had been made on July 14, 1999 by substituted service. On September 15, 1999 Dessaline and Amoakon, through counsel, filed an answer.

On December 17, 1999 defense counsel filed a motion to dismiss the complaint for failure to answer interrogatories. By letter dated December 23, 1999, respondent opposed the motion, stating that (1) he never received reciprocal answers to interrogatories, (2) the discovery period was over and (3) a trial date had been fixed. Respondent's file contained no indication that he had notified his clients of the dismissal motion.

Thereafter, respondent's clients failed to appear at court-ordered depositions. Defense counsel again moved for dismissal of the complaint. Although Judge McVeigh directed respondent to appear on the January 7, 2000 return date of the motion, he failed to appear. The transcript of the January 7, 2000 hearing indicated that, according to defense counsel, respondent's clients had failed to appear for depositions on four occasions, resulting in a court order compelling them to appear for depositions. Their failure to appear at court-ordered depositions caused the motion to dismiss the complaint.

On the January 7, 2000 return date of the motion, Jason Opat, Judge McVeigh's law clerk, told the judge that, although the motion had been carried to give respondent an opportunity to appear, respondent notified him that he would not be appearing. In addition, at the January 7, 2000 proceeding, Judge McVeigh remarked that, while she is reluctant to dismiss complaints, this was not the first such application involving respondent. She added that she had given respondent every opportunity to file an opposition. She dismissed the complaint with prejudice on that date.

Almost one year earlier, on February 22, 1999, Judge McVeigh had prepared the following memorandum:

> Over the last couple of months this Court has noted with increasing frequency, papers like the enclosed from Mr. Moffengelli [sic]. He has repeatedly refused to appear for oral argument, even on cases where the Court Rules require that he provide proof that his clients have been notified and that he and the clients appear or the cases will be dismissed with prejudice. This was the subject of a discussion of a meeting of the Civil Judges in the County wherein both Judges Donato and Judge Passero commented upon the same type of conduct. It is becoming increasing obvious that there is a problem with Mr. Moffengelli [sic], whether it be health wise or profession wise that is ultimately going to impact not only on him but on his clients. . . .

At the ethics hearing, Judge McVeigh testified that she was distressed by respondent's failure to appear at the *Smith* hearing and that she had discerned a pattern of conduct that caused her to be concerned about respondent:

> My sense was that no matter what I did, Mr. Maffongelli wasn't going to appear, because there almost seemed to be a connection missing as to what he was supposed to be doing. It wasn't malicious. I don't think it was malicious. I sensed that it wasn't a personal disrespect for me or the Court, but there was just a lack of understanding of what he was doing.

Judge McVeigh opined that respondent's conduct adversely affected his cases.

Respondent denied refusing to appear before Judge McVeigh or any other judge. He also denied that Opat had notified him to appear in court.

The special master found failure to prepare a written fee agreement and conduct prejudicial to the administration of justice. He declined to find gross neglect, lack of diligence, failure to communicate, conflict of interest and failure to expedite litigation.

* * *

In this matter, respondent failed to answer interrogatories, failed to produce his clients at depositions scheduled on four separate occasions, refused to appear at a hearing, when directed by a judge, and permitted his clients' complaint to be dismissed, all in violation of *RPC* 1.1(a), *RPC* 1.3 *RPC* 3.2 and *RPC* 8.4(d). Also, his fee agreement violated *RPC* 1.5(c).

We agreed with the special master's dismissal of the charges of *RPC* 1.4(a) and (b) and *RPC* 1.7(b).

The Jean Matter (Count Nine)

On March 13, 1995, respondent was retained by Yrose Jean and two other passengers in a car owned and driven by Odel Barthelemy, which was involved in an accident with a vehicle owned by Awilda Matos and driven by William Matos. The fee agreement consisted of respondent's handwritten note stating "[c]ontingent Fee – 1/3 of net." The note was signed by the three clients and respondent.

On January 7, 1997 respondent filed a lawsuit on behalf of the three passengers against Awilda and William Matos, Odel Barthelemy, Maryland Insurance Group/Zurich Personal Insurance ("Maryland") and New Jersey Manufacturers Insurance Company.

Although the plaintiffs' depositions were scheduled for Monday, August 18, 1997 and were confirmed with respondent's office on Friday, August 15, 1997, respondent and his client failed to appear. When the secretary of one of the defense attorneys called respondent, he announced that he would not be attending the depositions. He further informed the secretary that, if the plaintiffs appeared, as they had been instructed, counsel could have them sworn in and proceed with initial instructions. Respondent's file did not contain responsive pleadings, notices or letters about the depositions.

On December 22, 1997 Judge Christine Miniman entered an order compelling plaintiffs to appear for depositions and providing that their failure to appear could result in the filing of a motion to dismiss the complaint. Respondent did not oppose the motion to compel depositions. Because respondent did not produce his clients for the court-ordered depositions, on February 2, 1998 defense counsel filed a motion to dismiss the complaint. On February 4, 1998 respondent filed a handwritten opposition to the motion, as follows:

1. Order for Jan. 9 deps came here after Jan. 9 and I so advised.
2. Interrogatories were done!
3. Trial date already set!
4. This is outrageous!
5. Now we request fees!

We waive oral – not available.

I so certify.

Respondent attached his adversary's form of proposed order, on which he handwrote, "Fees to Joseph Maffongelli."

On May 20, 1998 Judge McVeigh dismissed the complaint with prejudice. By letter dated June 11, 1998, respondent notified Judge McVeigh that he had not received the order compelling his clients to appear at the January 9, 1998 depositions until after that date and that "there must be some mistake here." Judge McVeigh denied respondent's request to reinstate the complaint.

Judge McVeigh testified at the ethics hearing that respondent's conduct in the *Jean* matter was the type of circumstance cited in her February 22, 1999 memorandum mentioned above, that is, respondent's handwritten opposition to the complaint lacked supporting documentation and his request for fees lacked a notice of cross-motion, certification and proof of service.

For his part, respondent contended that he did not receive the order compelling his clients to appear for depositions until sometime after the January 9, 2000 deposition date and that, in any event, he could not locate his clients.

The special master found gross neglect, lack of diligence, failure to prepare a written fee agreement, failure to expedite litigation and conduct prejudicial to the administration of justice. He did not find failure to communicate or conflict of interest.

* * *

After respondent and his clients failed to appear at scheduled depositions, the court entered an order compelling their presence. Respondent and his clients again failed to appear. Respondent offered no documentation in support of his claim that he had not received the order until after the date scheduled for the depositions. Even after the complaint was dismissed with prejudice, rather than filing a formal motion for its reinstatement, respondent simply sent Judge McVeigh a letter stating that there must have been a mistake and asking her to reinstate the complaint. Respondent's conduct in this matter violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 3.2 and *RPC* 8.4(d). In addition, his fee agreement did not comply with *RPC* 1.5(c).

Like the special master, we found no clear and convincing evidence that respondent failed to communicate with his clients and engaged in a conflict of interest.

The Stolarz Matter (Count Ten)

On November 17, 1995 respondent was retained to represent Irene Stolarz, a pedestrian who had been hit by a car on September 9, 1995. The handwritten fee agreement stating "[c]ontingent Fee – 1/3 of net" was signed by Stolarz and respondent.

On January 7, 1997 respondent filed a complaint on Stolarz' behalf. After defense counsel propounded interrogatories, respondent served handwritten and uncertified answers. On August 11, 1997 defense counsel moved to dismiss the complaint for failure to answer interrogatories, contending that he had requested certified answers from

respondent by letters dated May 5, 1997, June 17, 1997 and July 2, 1997. Respondent opposed the motion to dismiss in an August 15, 1997 letter to the clerk, as follows:

> We vehemently oppose motion returnable September 12, 1997 on the papers.
>
> The moving party's papers actually include the answers they are looking for!
>
> We sent in all the answers on April 28, 1997 last. We request fees for having to deal with this!

On September 9, 1997 Judge Leopold Monaco dismissed the complaint. By letter dated September 29, 1997, respondent asked Judge Monaco to reinstate the complaint, stating that he had already submitted interrogatory answers and that his adversary did not object to the complaint's reinstatement. On October 27, 1997 Judge Monaco reinstated the complaint.

At some point, defense counsel filed a motion for summary judgment, arguing that Stolarz did not meet the verbal threshold. In an October 28, 1998 letter, respondent opposed the motion:

> We are not available for oral argument and waive same.
>
> I personally know the plaintiff and know that since the accident in question, she hardly walks at all. She cannot walk without a cane. This is a commonsense situation. This woman is now debilitated since this accident.
>
> Regardless of the Brill case or any other case, this woman can no longer walk without assistance since this accident.
>
> The court will have to observe this woman in order to make a determination and can do so on the trial date. . . .
>
> I certify to the foregoing.

On November 10, 1998 Assignment Judge Passero instructed respondent to appear on the November 20, 1998 return date of the motion. Respondent brought his client to court and asked Judge Passero to take judicial notice of his client's medical condition. During the hearing, respondent handwrote a certification that his client signed. The certification stated that, since the accident, Stolarz was unable to walk, work or "do most of what I could do before." Although Judge Passero gave respondent the opportunity to adjourn the motion to obtain competent proofs to demonstrate his client's medical condition and to correlate her medical condition to the accident, respondent declined the court's offer, insisting that "this is the most competent opposition we can present" and maintaining that he did not need to file a brief when "it's common sense." Judge Passero granted the motion for summary judgment, finding that not even a "scintilla of competent opposition" had been submitted.

Judge Passero testified at the ethics hearing that respondent's opposition to the motion did not include a brief, certification or medical report. According to Judge Passero, he directed respondent to appear at oral argument because, upon reviewing the papers, he determined that respondent had not presented competent opposition to the summary judgment motion and he wanted to give him an opportunity, for the sake of the client's case, to object to the motion. Judge Passero described respondent's handling of the *Stolarz* matter as "gross incompetence" and "almost malpractice *per se*," noting that respondent had deprived his client of the opportunity to "have her day in court." Judge Passero noted

that respondent never showed a nexus between his client's condition and the accident. The judge then offered to adjourn the matter to give respondent an opportunity to submit competent medical proofs, an offer that respondent rejected. According to the judge, it is not the practice, at a summary judgment hearing, for the court to examine the client to determine the extent of the injury, except in unusual circumstances, such as permanent disfigurement, for instance.

With respect to respondent's conduct generally, Judge Passero testified that, on numerous occasions when oral argument had been required or directed by the court, respondent would scribble a note indicating his inability and, in fact, refusal to appear. According to Judge Passero, on those occasions when respondent did appear, he became short-tempered with his adversary, screaming at his adversary during one hearing. The judge mentioned that, in one instance, he saw paperwork on which respondent had used a crayon to write his reply. Judge Passero indicated that his predecessor, Judge Falcone, had received so many complaints about respondent that he began to maintain a file and directed Calcines-Lowe to continue to do so.

In Judge Passero's opinion, respondent might have suffered some type of lapse, since he had never exhibited behavioral problems before and then, over a three-year period, began a course of conduct that raised questions about both his mental and professional competency. The judge reported respondent's conduct to the OAE because "the number of

incidents and the nature of the incidents [] were escalating" and he became concerned about the public's protection. When respondent's counsel suggested that respondent's problems might have resulted from staffing shortages or a high volume of practice, Judge Passero stated as follows:

> I don't know if the problem was due to volume of practice. You were assuming that's the problem. I don't know if that's the problem because what was argued here displayed a total lack of appreciation of a motion for summary judgment, a total lack of knowledge and appreciation of what is a competent response to a motion . . . . That bespeaks a certain level of ignorance and the incompetence has nothing to do with the number of personnel in your office.
>
> [2T122][8]

Judge Passero testified that his purpose in reporting respondent's conduct was not to have his license suspended, adding that respondent was not acting out of venality or greed. He suggested that respondent would benefit from a proctor and "refresher courses on rules of procedure and proper conduct for lawyers representing clients."

Respondent's client, Stolarz, testified that respondent had never (1) discussed the verbal threshold issue with her; (2) asked her to answer interrogatories; (3) told her that her case had been dismissed and reinstated; (4) indicated that a doctor was required to offer an opinion that she was permanently injured as a result of the accident; and (5) arranged for her to be examined by a physician, other than the doctor retained by the defense.

---

[8] 2T refers to the transcript of the October 18, 2001 hearing before the special master.

Stolarz stated that, after the summary judgment motion, respondent mentioned that she could appeal the judge's ruling. According to Stolarz, because she thought that respondent was not interested in her case, she declined to file the appeal. She reluctantly added that she was not satisfied with respondent's representation and that he did not seem interested in her case. Stolarz related that, within the past year, respondent had telephoned her to ask her if she had been pleased with his services, telling her that a judge had told him that he had not represented her fairly.

For his part, respondent claimed that, although Stolarz told him, when he was retained, that she did not have a verbal threshold insurance policy, he learned later that she had such a policy. He also contended that, although he had mentioned the need to obtain a medical opinion stating that Stolarz had become disabled as a result of the accident, and had suggested the names of four physicians, Stolarz had rejected his suggestion. Respondent asserted that he had submitted his clients' interrogatory answers to his adversary and that he had opposed the summary judgment motion with medical records from her treating physician. According to respondent, some judges want the client present so that they may make a determination on the verbal threshold issue; he, therefore, assumed that Judge Passero would follow that practice. With respect to Stolarz' decision not to appeal the dismissal, respondent contended that, although he advised her to file an

appeal, she contended that she "hated" the system and did not wish to proceed with an appeal.

The special master found gross neglect, lack of diligence, failure to prepare a written fee agreement, failure to expedite litigation and conduct prejudicial to the administration of justice.

* * *

Respondent's representation of Stolarz was fraught with problems. After his adversary moved to dismiss the complaint for failure to answer interrogatories, respondent submitted a letter and request for fees, without filing a motion with supporting certification. After the complaint was dismissed and reinstated, respondent's adversary filed a motion for summary judgment. With his client's claim hanging in the balance, respondent filed a letter, instead of a formal pleading, in which he inserted his standard language advising the court that he was not available for oral argument. Respondent appeared only because Judge Passero directed him to do so. Again, he did not file a certification, brief or other document to oppose the motion. To object to the motion respondent relied solely on (1) his letter, in

which he vouched that he knew Stolarz and her condition[9] and (2) the court's observation of his client. When the judge told respondent that he had not presented competent proof of his client's injuries, respondent submitted his client's "certification," which he had just written. Inexplicably, respondent declined Judge Passero's offer to adjourn the hearing to permit him to obtain competent evidence of his client's condition.

In Judge Passero's opinion, respondent's representation of Stolarz was grossly incompetent and almost malpractice *per se*. His observations of respondent were similar to those of Judge McVeigh. He properly rejected the suggestion made by respondent's attorney that the volume of respondent's practice and his staff shortage were responsible for respondent's conduct. The judge noted that respondent's conduct with respect to the motion bespoke ignorance and incompetence.

By permitting his client's case to be dismissed, respondent violated *RPC* 1.1(a) and *RPC* 1.3. His tactics also violated *RPC* 3.2 and *RPC* 8.4(d). In addition, Stolarz testified that respondent never informed her about the verbal threshold issue, the dismissal of her complaint for failure to answer interrogatories or the need for medical proof of permanent injury stemming from the accident. Respondent, thus, failed to keep his client informed about the matter, in violation of *RPC* 1.4(a). Although he was not charged with a violation

---

[9] Although respondent most likely violated *RPC* 3.4(e), which provides that a lawyer shall not "assert personal knowledge of facts in issue except when testifying as a witness," we determined not to deem the complaint amended to include that charge.

of *RPC* 1.4(a), the record developed below contains clear and convincing evidence of a violation of that *RPC.* Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. *R.* 4:9-2; *In re Logan*, 70 *N.J.* 222, 232 (1976).

As in the other matters above, respondent's fee agreement did not comply with *RPC* 1.5(c).

Pattern of Neglect (Count Eleven)

The complaint alleged, and the special master found, that respondent engaged in a pattern of neglect.

Respondent's Contentions and Mitigation

Respondent submitted "character letters" from his pastor and from three attorneys, attesting to his good character and professionalism. He also presented documents indicating that he had donated time and money to various groups, such as high school students, the Montclair YMCA, the American Bar Endowment, the Early Settlement Panel program, the Essex County Bar Association and the Essex County Bar Foundation.

At the ethics hearing, respondent denied that he had ever failed to appear before a judge; that he had ever been sanctioned by a judge; that he had deleted his name and used a

court envelope, resulting in postage due to the court; and that he had ever used a crayon when submitting papers to court, acknowledging that, on one occasion, he had used a "red heavy pencil for emphasis."

When confronted numerous times with testimony that contradicted his position, respondent either disputed that the testimony was accurate or contended that the witness was mistaken. For example, as mentioned above, respondent denied that he had attended a conference with Judge Dumont on February 28, 2000 in the *Milbauer* matter, contrary to Judge Dumont's and Sanchez' testimony, contrary to his own answer to the ethics complaint, and contrary to the stipulation. When asked about Judge Dumont's testimony that a conference had taken place, respondent asserted that the judge was mistaken. When questioned about Judge McVeigh's testimony that he had repeatedly refused to appear before her for oral argument, respondent declared that he did not recall her testimony. Similarly, he denied that Judge Diamond had testified that he had sanctioned him for refusal to appear before an early settlement panel. He also asserted that his clients, such as Cerretta and Stolarz, continue to use his services, noting that they testified only because they were under subpoena.

Respondent maintained that the court rules do not prohibit handwritten pleadings or answers to interrogatories, although he agreed that such practice is unprofessional and untidy. When confronted with various rules that specify the size of type to be used and that

require that documents be double-spaced, respondent contended that those requirements apply only if attorneys elect to submit typewritten documents. He further asserted that the word "shall" contained in the rules is not always mandatory.

In his answer to the ethics complaint and at the ethics hearings, respondent stated that, because he had "thinned out" his files before closing them – and, consequently, before submitting them to the OAE – the files might not have documents that could have assisted him in defending the ethics charges.

Respondent insisted that the only reason for the ethics charges against him was that Calcines-Lowe had a personality conflict with him and had found a "willing ear" in Judge Passero. When asked about the other judges' reported incidents about his conduct, respondent's reply was that, although they may not have "stretched the truth," they "characterized" the incidents in a negative way. He also stated that "this is on the Internet. People know about this in Wisconsin, Michigan."

Although respondent conceded that he had made mistakes and had not strictly complied with the court rules, the following exchange with his attorney demonstrates that he still does not understand his professional obligations:

> Q. [I]f you have an issue with the clerk, whether or not a document conforms or complies, would it be better to file a motion and let a judge decide that?
>
> A. (No response.)

Q. What do you think of that?

A. Well, it depends – and my shortcoming here. I'm not following your question. . . .

Q. Sometimes clerks get it wrong . . . . They don't understand.

A. As we all do, yes.

Q. Under that circumstance, would it be better to file a formal motion to have the issue decided by a judge?

A. (No response.)

Q. Do you agree or disagree with that statement?

A. Well, in general, yes, I mean, other than a point, where you're burdening the Court with things that aren't necessary; but yes, for the most part, I would agree.

[7T120-121]

At oral argument before us, respondent submitted the report of psychologist Dante C. Mercurio, Ph.D, dated two days earlier, February 4, 2003.[10] According to Dr. Mercurio, respondent displayed "normal psychological functioning"

* * *

[10] Although, ordinarily, a motion to supplement the record is required, we determined to accept Dr. Mercurio's report, after the presenter reviewed it and submitted comments to it.

The special master recommended a three-month suspension and proof of fitness, prior to reinstatement. He also recommended that, no later than six months after reinstatement, respondent submit proof of successful completion of the Skills and Methods courses and, for two years, practice law under the supervision of a proctor.

* * *

As mentioned above, the special master's finding that respondent's conduct was unethical is supported by clear and convincing evidence. Respondent displayed a pattern of inability, unwillingness and, at times, refusal to follow the court rules. Instead of preparing formal pleadings, he began to submit handwritten documents to the court, often scrawled either on court-generated notices or on his adversary's moving papers. He also submitted answers to interrogatories in handwritten, rather than typewritten, form. He continued to send the same improper documents to the courts, even after receiving clear instructions not to do so. In addition, he failed, and sometimes refused, to appear at hearings where his presence was required. He displayed arrogance and defiance of both the court rules in general and judges' instructions that had been directed to him individually, such as orders that he appear in court or Judge Reisner's order that he submit typed interrogatory answers. He showed a woeful lack of familiarity with court rules and practices. He refused to

observe the dignity of court proceedings. Several judges expressed concern about his professional and mental competency and the potential harm he could cause to his clients. He became the subject of discussion during judges' meetings.

Beyond the outrageous and egregious acts that respondent committed in these matters, at the ethics hearings he refused to accept responsibility for his mistakes. Instead, he blamed Calcines-Lowe for his problems, claiming that she had found a "willing ear" in Assignment Judge Passero, who, in turn, had recruited other judges to complain about him. Respondent refused to acknowledge that Judge Falcone, Judge Passero's predecessor, had received complaints from other judges about him and had instructed Calcines-Lowe to compile a file on him.

Moreover, respondent displayed a startling ignorance about court rules and procedure. For example, he contended that the clerk should have entered a default against a party after he had obtained service, despite the fact that the complaint had previously been dismissed and not reinstated. He also argued at the ethics hearing that an attorney who files a complaint against a party does not have to serve that party.

Respondent's refusal to follow clear directions resulted in the needless waste of many hours of staff time by clerk's office personnel trying to decipher his scrawlings, research the status of his cases and explain to him the appropriate procedure and course of action. Judges, too, were required to expend their time and resources due to respondent's

behavior. Several judges wrote to respondent about his improper submissions. In addition, in the *Milbauer* case, Judge Dumont could have tried another case if respondent had informed him earlier that he could not proceed with his matter. Also, he engaged in a confrontation with Judge Diamond's secretary. According to Judge Passero, respondent became short-tempered and yelled at his adversary during a motion hearing.

In sum, respondent displayed gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to prepare a written fee agreement, failure to expedite litigation, failure to disclose a material fact to a tribunal, disobedience of an obligation under the rules of a tribunal, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice.

Discipline for similar discourteous behavior by an attorney toward the courts and others involved in the legal process has ranged from a public reprimand to disbarment. A public reprimand was imposed in *In re Lekas*, 136 *N.J.* 514 (1994), where an attorney disobeyed a municipal court judge's order to leave the courtroom during an unrelated trial and insisted that the judge relieve her as counsel, despite her refusal to file the appropriate motion; mitigating factors included the attorney's youth and inexperience. A public reprimand also was imposed in *In re Stanley*, 102 *N.J.* 244 (1986), where an attorney engaged in shouting and other ill-mannered behavior toward the court in three separate cases; the attorney was retired from the practice of law at the time of the discipline, had no

prior ethics infractions and did not injure any party by his conduct. Similarly, in *In re Yengo*, 92 *N.J.* 9 (1983), an attorney was publicly reprimanded for absenting himself for two days of a five-week trial without prior notice to the court; mitigating factors included the attorney's age, his failing health, his wife's precarious health, and his imminent withdrawal from the practice of law. *See also In re Mezzacca*, 67 *N.J.* 387 (1975) (attorney referred to a departmental review committee as a "kangaroo court" and made other discourteous comments; attorney had no previous discipline and might have become personally involved in his client's cause)

More serious misconduct has resulted in suspensions. In *In re Hall*, 170 *N.J.* 400 (2002), the Court suspended the attorney for three years for lack of diligence, failure to keep clients reasonably informed, failure to explain matters to clients, frivolous claims, failure to expedite litigation, obstruction of access to evidence, conduct intended to disrupt tribunal, dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice. In that case, the attorney repeatedly refused to comply with court rules and procedures, disrupted trials, showed disrespect toward judges and adversaries, and was held in contempt for failure to follow judges' orders. Similarly, in *In re Vincenti*, 92 *N.J.* 591 (1983), the attorney received a one-year suspension for constant and deliberate disregard of minimum standards expected of attorneys, by making repeated discourteous, insulting and degrading verbal attacks on a judge and his rulings, thereby substantially

interfering with the orderly process of a trial. Finally, in *In re Grenell*, 127 *N.J.* 116 (1992), a two-year suspension was imposed on an attorney who, in one matter, filed frivolous criminal charges against his wife's former husband, shouted obscenities at the former husband and threatened to kill his adversary; in a second matter, the attorney was charged with contempt and was removed from a municipal courtroom after he became loud and uncontrolled; in three additional matters, the attorney disrupted court proceedings by screaming obscenities at his adversaries and engaging in loud and unruly behavior.

Here, respondent's misconduct was not as serious as Hall's, who continuously interfered with judges' attempts to proceed with cases in an orderly fashion, accused judges and her adversaries of lying and conspiring against her and was disrespectful and abusive to judges and adversaries. Moreover, Hall had been admitted for a very short time, had a prior three-month suspension and was temporarily suspended at the time that her ethics matter was pending. Similarly, although respondent displayed shades of the sort of misconduct for which Vincenti and Grenell were disciplined, their behavior was much more threatening and abusive. Moreover, a significant mitigating factor here is respondent's previously unblemished career of approximately thirty years.

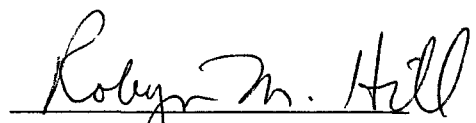
At oral argument, before us, respondent contended that he should not receive a suspension, relying on *In re Dare*, 174 *N.J.* 369 (2002). In *Dare*, in three client matters, the attorney grossly neglected three real estate transactions, failing to file applications for

riparian grants in two of them; failed to communicate with those clients; failed to return escrow funds to one of those clients and engaged in a pattern of gross neglect. Here, respondent's misconduct was much more defiant, pervasive and extensive than that of Dare.

Based on the foregoing, a six-member majority determined that respondent should be suspended for one year. We also determined to require respondent to submit, prior to reinstatement, proof of both physical and mental fitness to practice law, as attested by health professionals approved by the OAE. Finally, after reinstatement, respondent is to practice under the supervision of a proctor indefinitely and until further order of the Court. One member voted for a three-month suspension, with the conditions imposed by the majority. One member recused himself. One member did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: 
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph A. Maffongelli
Docket No. DRB 02-407

Argued: February 6, 2003

Decided: April 21, 2003

Disposition: One-year suspension

Members	*Disbar*	*One-year Suspension*	*Three-month Suspension*	*Dismiss*	*Admonition*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley		X					
Boylan			X				
Brody		X					
Lolla							X
O'Shaughnessy						X	
Pashman		X					
Schwartz		X					
Wissinger		X					
Total:		6	1			1	1

Robyn M. Hill 4/30/03
Robyn M. Hill
Chief Counsel