SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-218

IN THE MATTER OF

SAMUEL A. MALAT

AN ATTORNEY AT LAW

Decision

Argued: September 13, 2001

Decided: January 30, 2002

Eugene McCaffrey appeared on behalf of the District IV Ethics Committee.

Carl D. Poplar 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 upon a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1989. He has no disciplinary history.

A series of four complaints alleged gross neglect, lack of diligence, failure to communicate with clients, refusal to turn over files upon the termination of the representation in some of the matters, failure to comply with court orders to turn over client files and failure to cooperate with ethics authorities.

I. The Canon Financial Services, Inc. Matter - (District Docket No. IV 98-51E)

The complaint alleged that respondent violated RPC 1.4(a) (failure to communicate with client), RPC 1.16(d) (failure to return client files upon termination of the representation) and RPC 3.4(c)(knowingly disobeying an obligation under the rules of a tribunal).

In the summer of 1995 Canon Financial Services, Inc. ("Canon") retained respondent to represent it in a large group of collection cases. On October 3, 1997 Canon terminated the representation. At the time, respondent had approximately 155 Canon matters in his office. The termination letter stated as follows, in part:

> I have determined that I wish to terminate our Representation Agreement with your office. We have received derogatory comments about the way some of the files have been handled by your office. It is extremely important that the representation of Canon Financial Services, Inc. be done with the utmost professionalism so as not to jeopardize our relationship in both the business and legal community.
> Given these circumstances, we will no longer be sending you new accounts and would ask that all current files in your office be turned over with Substitutions of Counsel to Howard N. Sobel, Esquire, of Howard N. Sobel, P.A., no later than November 1, 1997.

Respondent testified that, prior to his receipt of this letter, he had no indication that Canon was unhappy with his work. Nevertheless, the November 1, 1997 deadline passed without the surrender of the files to Sobel, Canon's corporate counsel.

Thereafter, a dispute arose about respondent's fees in connection with files being turned over to Canon. At some point between October and December 1997, Canon sought the additional assistance of Lee Herman, an attorney who had handled some of Canon's collection matters immediately prior to respondent's involvement.

Respondent testified that, by this time, he had begun to prepare the files for transfer, but neither Canon, nor Sobel or Herman would accept the files. This claim is puzzling, insomuch as Canon again wrote to respondent on December 10, 1997, concerned about the files' transfer. That letter states as follows, in part:

> Obviously, we are trying to get all of the files in your possession to Howard so that there can be a smooth transition in the handling of all of our accounts.
> Concerning the transfer of our files, when we spoke in mid November I assumed you had our files ready for pickup. Paul has called your office several times over the last two weeks to make arrangements for the files and the Substitutions of Counsel letters to be picked up. You have not returned our calls. I have personally called four times in the last two days and each time I am told you are unavailable.
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> * * *
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> Sam, I want my files and I believe you have no right to hold them. Let's part company amicably. I hope to talk with you today.

Respondent did not reply to that letter.

Herman immediately filed an order to show cause for the release of the files. On December 24, 1997 the court ordered respondent to turn over the files in two

installments. The first installment, due December 31, 1997, was to include all files requiring immediate attention. Notwithstanding the court's order, respondent sent no files, claiming at the DEC hearing that none required immediate attention.[1] Respondent informed no one of his determination not to send the files forthwith. The order further required respondent to deliver the remainder of the Canon's files no later than January 6, 1998. Respondent failed to do so, without any explanation to Canon or its counsel.

On January 12, 1998 respondent delivered a portion of the Canon files to Sobel's office. According to Canon's Director of Asset Management, Salvatore Barabuscio, these files were "incomplete and totally unorganized." Because a large number of the files were still not forthcoming, Canon was again forced to take legal steps to recover them. On or about May 1, 1998 the court entered an order requiring respondent to release the files to Canon by May 6, 1998. Respondent failed to do so. Furthermore, the order held respondent in contempt, under R. 1:10-3, and required him to pay $625 in attorney fees to Herman.[2]

Respondent persisted in his unwillingness to deliver the files. He claimed that his reluctance stemmed from his uncertainty as to whom he should send the files, Sobel

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[1]Respondent admitted, however, that some of the files required attention in the next thirty to sixty days.

[2]Respondent filed opposition papers eight days late and only two days before the hearing. It is unclear if the court considered respondent's letter-brief. However, respondent admittedly appeared late for the hearing on the order to show cause. The judge had already heard the matter.

or Herman. Respondent also asserted that both Herman and Sobel refused to accept the files. He testified at length about the allegedly tortuous nature of the file turnover:

> Q. Was there a reason that you just didn't take them to Canon's office?
> A. Yes, there was. The reason was Canon was one of the people in the middle of the circle on the perimeter of the circle pointing their way to Howard Sobel. Howard Sobel was pointing his way to Herman and Lee Herman pointing his way to Canon and nobody saying give me the files.

Respondent never alerted the court about his alleged dilemma. Moreover, there is no evidence that he ever attempted to return the remaining files and that he was turned away, as he claimed.

Respondent's other lengthy and convoluted excuses for not returning the files are also found in his correspondence to the Office of Attorney Ethics ("OAE") and his answer to the complaint. They do not warrant detailed discussion here, because they are utterly unsupported by the record. Respondent did not present a single letter to his client, did not document any conversations with any person, or present any shred of evidence to support the proposition that he rightfully withheld the files from Canon or that he believed that he did not have an obligation to comply with the court's order.

Asked why he had not advised Canon of his perceived difficulties in delivering the files to Sobel or Herman, respondent answered that he could not have done so because Canon was represented by counsel. The extent of respondent's odd view of

the matter is best summed up in his own words, contained in an August 27, 1998 letter to OAE Deputy Ethics Counsel:

> The single most important item here is that I have never refused to deliver the files. Initially, my only position in the files was that I maintained lien [sic] for my contingency fees and that lien would be lost if I surrendered the files and was precluded from filing a lien. Mr. Barabuscio wanted me to do just that and then unilaterally dictate the terms of my 'surrender' – accept $5,000 OR ELSE. It is obvious what the 'or else' turned out to be. I am now forced to fend off this baseless grievance.

As evidenced by the above statement, respondent believed that he had done nothing wrong to that point, even though by then he had already disobeyed two court orders for the return of the files.

Finally, respondent turned over the remaining files to the OAE on September 14, 1998, almost one year after Canon's initial request. The OAE gave the files to Canon two days later.

II. The Arnold Matter- (District Docket No. IV 98-082E)

The complaint alleged that respondent violated RPC 1.1(a) (gross neglect) and RPC 1.2(d) (assisting a client in filing a fraudulent bankruptcy petition).

Respondent and the DEC entered into the following stipulation of facts:

> 1. The Grievant, Mrs. Arnold, consulted with the Respondent, Samuel Malat, regarding a judgment that had been entered against her and her husband as a result of them signing and/or guaranteeing a debt.

2. Mrs. Arnold, the Grievant, was concerned about the judgment creditor levying, and/or executing against their personal bank account (and was further concerned about a wage execution against her husband's salary).

3. The respondent advised the Grievant about the filing of a Chapter 13 Petition in bankruptcy pro se (or, at her choice, engaging another lawyer to file a Chapter 13 bankruptcy Petition) without annexing thereto a schedule of debts.

4. The respondent advised the Grievant that the filing of a Chapter 13 Petition in bankruptcy would stay or prevent a levy and/or execution against her bank account (and would stay or prevent the wage execution against her husband's wages) for about six weeks.

5. The Respondent further advised the Grievant that the bankruptcy court would ultimately dismiss the bankruptcy if the schedules were not filed. Mrs. Arnold's position is that the Respondent advised her to wait one week after the filing of the Petition and thereafter notify the court that the schedules would not be filed the [and] the court would thereafter dismiss the bankruptcy because the schedules were not attached.

6. The Grievant's position was that she was told by the Respondent that the filing of the Petition for bankruptcy would not appear on her credit report. The Respondent's position is that he did not advise her that it would not appear on her credit report. The Respondent's position is that it is his practice to explain to potential clients of the potential positive impact of the filing of the bankruptcy Petition for clients with substantial debts and/or judgments. The Respondent's position is that he tells perspective [sic] clients that the effect of a bankruptcy would appear on a credit report for between seven and ten years.

7. Both the Respondent and the Grievant agree that the Respondent advised and told the Grievant that the filing of the Petition in bankruptcy would stay the enforcement of any judgment.

8. Arnold's position is that within one week of the filing of the bankruptcy, her credit cards were canceled and the bankruptcy did appear on her credit report.

9. Arnold stated that when she advised Malat of what had happened, he advised her he would rectify the situation or that he had never seen this happen before. Arnold's position is that she made several more calls to Malat but he was either not there, or would not return calls or if she did connect with him, he would indicate to her there was a letter on his desk pertaining to her situation, that he would read it and get back to her.

10. Malat's position is that he told her it would be on the credit report but because the judgment was already on the credit report that there would be no greater impact because of the bankruptcy. Malat's position is that he did tell her that he never before saw credit cards canceled because of a Chapter 13 bankruptcy.

11. Malat's position is that he had a reaffirmation agreement on his computer. Malat's position is that he may have referred to it as being on his desk because it was on his computer. His position is that there were telephone calls back and forth. He told his secretary to tell Mrs. Arnold he would need the cancellation notices, which never came.

There was no testimony in this matter. After presenting the stipulation, the panel chair made the following comments:

PANEL CHAIR: You have presented to us, and we can deal with it, you've presented us with a stipulation of facts that essentially is a stipulation of factual allegations by each parties [sic].
If Mr. Poplar is comfortable with that and if you are, that's fine, we can proceed. I don't want either side of this issue to have a reason to object. I want to do this right.

MR. POPLAR: If we had testimony the record would have Mrs. Arnold's position and the record would have Mr. Malat's position.... I don't have any reservations about proceeding with the stipulation in this fashion.

III. The Vassey Matters - (District Docket No. IV 98-056E)

A. The Inverness Apartments Matter

The complaint alleged that respondent violated RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 1.16(d) (failure to turn over file upon termination of the representation).

On or about December 27, 1996 Richard E. Vassey retained respondent to represent him in connection with injuries sustained when he slipped and fell on ice, outside an apartment building. Respondent filed a complaint against several defendants, including Inverness Apartments, Grande Associates and Higgins Landscaping, the contractor responsible for snow removal at the complex.

On August 8, 1997 the complaint was dismissed for plaintiff's failure to answer Higgins Landscaping's interrogatories. Vassey testified that he found out about the dismissal on his own, when visiting his treating physician. Vassey also testified that he gave respondent his answers to the interrogatories two days after he received them in May 1997. Therefore, the dismissal came as a surprise to him.

After learning of the dismissal, Vassey called respondent several times asking for an explanation. According to Vassey, respondent assured him that he would have the matter reinstated. Vassey could not recall if respondent had told him the reason for the dismissal.

In January 1998 the complaint against another defendant, Grande Associates, was also dismissed for failure to answer interrogatories. Once again, Vassey had provided respondent with his answers to those interrogatories in a timely manner.

Ultimately, on January 23, 1998, respondent obtained an order reinstating the complaint against Higgins Landscaping.[3] By that time, Vassey had already consulted another attorney, Michael J. Weiss, about taking over the representation of this matter and several others that were pending in respondent's office. By letter dated January 28, 1998, Vassey directed respondent to release his files to Weiss.

As of March 20, 1998 respondent still had not released the files to Vassey, prompting another letter from Vassey about the release of the files. By letter dated March 24, 1998 respondent replied that he would not release the files unless he were assured that Weiss was going to take over the representation. Respondent also took the opportunity to notify Vassey of a deposition that, without consulting Vassey, respondent had already scheduled for March 31, 1998, only days away. On March 27, 1998 Vassey wrote to respondent, requesting an appointment to personally retrieve his files from respondent "post haste." Respondent did not reply to that letter. On April

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[3]The record also refers to respondent's reinstatement of the complaint against Grande Associates. The date of that reinstatement is unknown.

15, 1998 Vassey had another certified letter delivered to respondent's law office, advising him that he would be picking up his files on April 21, 1998 at 10:00 a.m. Again, respondent did not reply to that letter. Moreover, he did not prepare the files for release and was out of the office when Vassey arrived.

Because respondent refused to release the files, Weiss declined to take Vassey's representation. Shortly thereafter, Vassey retained another attorney, Michael Kaplan, to represent him.

Respondent, in turn, blamed Vassey for the problems in the case. According to respondent, Vassey was difficult to reach and did not cooperate with respondent's efforts to schedule depositions. Respondent presented no evidence to support his contentions in this regard.

With respect to his failure to release the files, respondent testified that he was prepared to release them upon receipt of a substitution of attorney. Respondent claimed that, although he invited Weiss to review the files at respondent's office, Weiss declined. Finally, respondent contended that he ultimately released the files to Vassey's subsequent counsel, Michael Kaplan, with a substitution of attorney and without incident. That was accomplished in or about October 1999, some sixteen months after the filing of the Vassey grievance.

B. The Encore Mortgage Corporation Matter

The second count of the complaint alleged that respondent violated RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 1.16(d) (failure to turn over client file upon termination of the representation).

On or about April 1, 1996 Vassey retained respondent to represent him in a matter titled Encore Mortgage Corporation v. Vassey. According to Vassey, Encore Mortgage Corporation ("Encore") had obtained a forgery of Vassey's signature on a commercial loan document, during the negotiation of a mortgage and loan transaction for Vassey's company, Westgate Realty. Vassey testified that the forged agreement required Vassey to pay Encore a $4,700 commission. Encore sought to enforce that agreement through arbitration proceedings.

On October 6, 1997 an arbitration panel made a finding in Encore's favor and awarded it the sum of $4,700. According to Vassey, respondent was supposed to appeal that award, which was made final on December 9, 1997. Thereafter, on February 26, 1998, Encore obtained a judgment against Vassey and Westgate in the amount of $4,700. On March 12, 1998 Encore filed a writ of execution against both parties. On or about June 8, 1998 Encore levied against a Westgate Realty bank account, in the amount of $4,815.11.

Vassey testified that respondent never advised him about any of the events in the case after the arbitration hearing. Vassey was under the mistaken belief that the

arbitration was "a trial run" and that respondent was going to take action on his behalf to "appeal" the arbitration award and to raise the issue of the forgery, which had not yet been litigated. Vassey further testified that he contacted respondent immediately upon learning from his bank that the account had been the subject of a levy. According to Vassey, he and respondent discussed the problem. Vassey recalled that respondent was surprised to learn that Encore had levied against Vassey's account and immediately promised to file a motion in bankruptcy court for the return of the funds.[4] He never did so.

Finally, Vassey alleged that he had called respondent on numerous occasions throughout the case and that respondent did not return many of those calls. Vassey claimed that, in order to get information about his matter, he resorted to unannounced appearances at respondent's office at closing time, when he would approach respondent on his way to the parking lot. He alleged that only in this fashion could he obtain information about his case.

Respondent denied all wrongdoing in the Encore matter. He testified that Vassey was aware early on that Encore had won the case at arbitration, citing his October 6, 1997 letter to Vassey, detailing the appeal procedure. That letter also stated respondent's understanding that Vassey did not wish to call the only alleged witness

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[4]By this time, Vassey had filed a petition for bankruptcy.

to the forgery, because it might ruin Vassey's business relationship with the bank for which that individual worked. Respondent also alleged that Vassey had declined several times to settle the case, despite Encore's willingness to do so for approximately $3,000. Finally, respondent's letter stated that, without the witness' testimony, Vassey had no viable forgery claim to pursue.

Thereafter, respondent claimed, Vassey made incessant calls to him about the cases in his care, calls which respondent admittedly did not return. However, respondent asserted, he always kept Vassey apprised of the status of his cases. When he was asked why he had not appealed the arbitration award, respondent stated that Vassey had never authorized him to do so.

Respondent also produced a February 19, 1998 letter to Vassey from his then associate, Vincent J. Gaughan, in which Gaughan recommended settlement and warned Vassey that "you have ten (10) days from the receipt of a filed copy of the Court Order to file a Motion for Reconsideration." That letter was sent to Vassey at the conclusion of a court appearance attended by both Gaughan and Vassey and after which the court entered a judgment against Vassey.

Respondent produced no evidence that he ever advised Vassey about the crucial events that occurred in the case afterwards, including the judgment, the writ of execution and the levy.

IV. The Groff Matter - (District Docket No. IV 98-096E)

The complaint alleged that respondent violated RPC 3.2(a) (failure to expedite litigation or treat with courtesy and consideration all persons involved in the legal process), RPC 3.4(d) (fairness to opposing party: failure to comply with discovery requests) and RPC 8.4(a) (attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another).

In or about October 25, 1996 respondent filed an action in federal court on behalf of John E. Groff, Jr. The suit alleged that Groff's civil rights had been violated by a group of law enforcement officials. In essence, the complaint alleged that the defendants persistently harassed Groff, in violation of his civil rights. The grievant, John J. Coffey, a defendant in the action, was the Chief of Police in Pennsauken, New Jersey. The civil rights complaint alleged, among other things, that Groff had been stopped on numerous occasions by Pennsauken police officers, without probable cause.

After twenty months on the court calendar, Groff's case was recommended for dismissal. The U.S. magistrate assigned to the case chronicled, in great detail, respondent's failure to expedite the litigation and the prejudice caused by respondent's "dilatory practices." Highlights from the magistrate's twenty-seven page report and recommendation are as follows:

> In support of their motions to dismiss, the defendants detail the difficulties they have encountered in attempting to proceed with discovery in this matter. All defendants have attached, by way of affidavits, letters [footnote deleted] reminding the plaintiff of his

discovery obligations and requesting that those obligations be met. Regardless of the serious nature of these motions, the plaintiff has utterly failed to properly respond. In lieu of a substantive response, counsel for the plaintiff has submitted two letters in opposition to these motions wherein counsel essentially claims that the defendants are harassing the plaintiff by forcing him to answer these motions to dismiss.

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Prejudice to the defendants is clear. They have been forced to defend this action for approximately eighteen months and have still not been able to depose the plaintiff. The defendants have appeared for conferences where counsel for the plaintiff has either not appeared or appeared completely unprepared to participate meaningfully in the status conference.

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The defendants have, throughout the course of this action, been forced to appear in court an unusual number of times and file useless motions, both of which have resulted in excessive expenditures of time and money for they and their clients. Further, the defendants have had to deal with the plaintiff's failure to appear at scheduled conferences and the failure of the plaintiff to submit to his deposition. Finally, the defendants have been denied the opportunity to ultimately resolve this matter and bring about some closure. It is for these reasons that the court concludes that the defendants have been prejudiced by the conduct of both the plaintiff and his counsel.

In a footnote, the magistrate focused on respondent's representation:

The dilatory conduct of counsel, while not dispositive, is certainly a factor at this junction. Unfortunately, the record is replete with plaintiff's counsel's complete and utter failure to abide by court orders and scheduling deadlines, to appear for conferences, and to accept any sort of responsibility for this matter. Consequently, the court shall not delineate the complete particulars of Mr. Malat's denial of responsibility for the prosecution of this matter.

For his part, respondent denied any wrongdoing, blaming everyone else involved in the case.

Respondent explained that he was only one of three attorneys representing Groff, blaming the two other attorneys for delays in the case. However, those attorneys acted as respondent's co-counsel. At all times, respondent was the attorney of record in the case. Respondent stated that each of those attorneys "took over" the case at different times and that he was blameless for the delays chronicled by the magistrate. Both attorneys were relieved as co-counsel at different intervals in the case. Respondent, however, remained in the case until it was dismissed on July 16, 1998.

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Finally, in the two Vassey and the Groff matters, the complaints alleged that respondent failed to cooperate with ethics authorities in the investigation of the grievances.

In Vassey, respondent failed to reply to the original grievance, which the investigator sent to him on or about June 25, 1998. Respondent ignored a second letter, dated July 23, 1998, also requesting his reply. Thereafter, the matter was turned over to the OAE for investigation. Respondent ignored the OAE's several requests for information, between September 1998 and January 1999. On January 9, 1999 respondent assured the OAE that he would "fax" his reply to that office that day. He did not. Respondent later claimed at the DEC hearing that he did not send his reply because he "was working on murder trials... I was fighting to keep people out of jail... It's not that the Attorney Ethics [sic] became unimportant, it simply slipped my mind."

In Groff, the OAE sent respondent a copy of the grievance and a letter dated December 29, 1998, requesting a reply to the grievance by January 20, 1999. Respondent received an extension until February 1, 1999, but did not submit a reply. On February 25, 1999 the OAE investigator called respondent and left a message for him to contact her. Respondent never did so. The complaint was filed in late March or early April 1999.

Respondent filed his answer to the complaint on August 19, 1999. The record does not explain the reason for this delay. Attached to the answer was respondent's detailed reply to the grievance, dated March 22, 1999. Respondent stated that he had sent that letter to the OAE at the time that he wrote it. However, that letter was not included in the record as part of the OAE's file. The OAE investigator could not shed light on this issue because her participation in the case ceased upon the completion of her investigative report, that is, before March 1999.

* * *

In Canon, the DEC found that respondent failed to communicate to his client the status of the collection files, in violation of RPC 1.4(a), failed to promptly surrender the files to the client upon the termination of the representation, in violation of RPC 1.16(d), and failed to obey the court orders to turn over the client's collection files, in violation of RPC 3.4 (c).

In Vassey/Inverness, the DEC found that respondent violated RPC 1.3 by allowing the matter to be dismissed twice for failure to answer interrogatories. The DEC noted, however, that respondent was able to reinstate the complaint against both defendants, before Vassey terminated his services. The DEC also found that respondent violated RPC 1.4(a) and RPC 1.16(d) by his failure to advise Vassey of the dismissals and to return the file.

In Vassey/Encore, the DEC found a violation of RPC 1.3 by respondent's failure to advise Vassey of his right to reject the arbitration award and failure to take steps necessary to avoid the entry of a judgment against him. In addition, the DEC found a violation of RPC 1.4(a) by respondent's "refusal to respond to Mr. Vassey's many inquiries about the matter." The DEC dismissed the charge of a violation of RPC 1.16(d), without explanation. Finally, the DEC found that respondent violated RPC 8.1(b) by his repeated failure to cooperate with ethics authorities, compounded by his ineffective explanations for his inaction.

In Arnold, the DEC found that respondent violated RPC 1.1(a) when he failed to rectify the damage done to Arnold's credit by his inaccurate advice that the bankruptcy would not appear on her credit report. The DEC also found that respondent violated RPC 1.2 by "counseling and assisting Mrs. Arnold in filing what he knew to be a fraudulent and illegal bankruptcy petition. [Respondent] knew that Mrs. Arnold

did not intend to pursue and complete the bankruptcy, and it was apparently Mr. Malat who proposed the sham filing."

Finally, in Groff, the DEC found a violation of RPC 3.2 for respondent's failure to expedite the litigation and RPC 3.4(d) for his dilatory conduct, "overreaching, obstructive handling of the litigation" and obvious refusal to comply with reasonable discovery requests in the case. The DEC found that "respondent assisted his client in pursuing frivolous and improperly motivated actions and demands." Finally, the DEC found that respondent violated RPC 8.1(b) for his failure to comply with demands for information in the Vassey and Groff matters.

* * *

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

Undoubtedly, respondent committed numerous ethics infractions. In Canon, he held the files hostage, refusing to return them. By respondent's own admission, Canon would not pay him what he thought he deserved for work performed on some of the files. That, however, did not relieve him of his duty to release those files to Canon upon his discharge as its attorney. Respondent's testimony that Canon, Sobel and Herman refused to accept the files was entirely contrived. Two court orders directed him to release the files. He released an initial batch of files, but did so late and without

any excuse. Thereafter, he held approximately half of Canon's files, until their eventual release to the OAE in September 1998, some nine months after the first court order directed their turnover. An attorney must, upon the termination of the representation, promptly deliver the file to the client or to his/her new attorney. The former attorney has the right to charge the new attorney for the reasonable costs of copying the file, but does not retain a right to otherwise withhold the file. ACPE Opinion 554, 115 N.J.L.J. 565 (1985). By his steadfast refusal to return the files to Canon or its attorneys promptly, respondent violated RPC 1.16(d).

With regard to RPC 3.4(c), that rule requires compliance with "an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists." Respondent's explanation for his refusal to turn over the files was that "Mr. Barabuscio wanted...to unilaterally dictate the terms of my surrender – accept $5,000 OR ELSE." However, even if respondent deemed that amount to be unreasonable, he had either to comply with the court's directive or file a motion for reconsideration. His failure to abide by the court orders violated RPC 3.4(c).

With respect to RPC 1.4(a), it is clear that respondent stalled Canon from the moment that his representation was terminated. It is evident from Herman's order to show cause for the return of the files to the various items of correspondence from Canon and its attorneys that respondent ignored their efforts to obtain information about the collection cases. In fact, respondent failed to communicate the status of those

files during the entire time between the termination of the representation (October 1997) and his release of the files to the OAE (September 1998). Respondent's failure to communicate with Canon, in the face of its persistent requests for information about its matters, violated RPC 1.4(a).

In the Arnold matter, the stipulation signed by the parties establishes a sparse set of facts – certainly not as illuminating as if both the grievant and respondent had testified about the case. However, the stipulation allows the conclusion that, from the outset, the filing of the Chapter 13 bankruptcy was for the express purpose of avoiding a levy on Arnold's bank account. It is not as though Arnold pondered the filing of a bankruptcy to resolve her financial situation. Rather, respondent "sold" the bankruptcy to Arnold as a one-time "quick fix" to avoid the levy. Because Arnold was concerned about the effect that a bankruptcy would have on her creditworthiness, respondent promoted the filing as temporary in nature, that is, to be dismissed automatically if Arnold failed to file certain required bankruptcy schedules. Respondent's conduct in recommending the filing of a bankruptcy with shortcomings that would guarantee its dismissal may not rise to the level of assisting a client in a fraudulent filing under RPC 1.2(d), but it was an improper use of the judicial system, in violation of RPC 8.4(d). Even though the complaint did not charge respondent with a violation of RPC 8.4(d), it contains sufficient facts to put him on notice of a possible finding of a violation of that rule. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976). Moreover, under the

circumstances of this case, a violation of RPC 8.4(d) would not result in discipline higher than for a violation of RPC 1.2(d).

With respect to the allegation of a violation of RPC 1.1(a), Arnold's and respondent's version of the events were diametrically opposed. Without testimony or other evidence to shed light on the matter, we cannot conclude by clear and convincing evidence that respondent grossly neglected the matter. Therefore, we determined to dismiss this charge.

In the Vassey matters, too, respondent acted unethically. In Inverness, he allowed the complaint to be dismissed twice. Respondent had no explanation for those dismissals, other than to blame Vassey for being difficult to reach and uncooperative. There is not a shred of evidence that Vassey was to blame for the problems in the case. To the contrary, Vassey testified that he promptly returned to respondent the answers to the interrogatories. We concluded, thus, that this was another instance of blame-shifting by respondent.

Respondent also refused to return Vassey's file upon the termination of the representation. In addition, the DEC correctly found that respondent failed to communicate with Vassey about critical events in the case, including the dismissals, which discovered on his own. Therefore, we found violations of RPC 1.3, RPC 1.16(d) and RPC 1.4(a) in Inverness.

In the Encore matter, contrary to respondent's wholly unsupported testimony, he failed to inform Vassey that he had a right to reject the arbitration award and then failed to take steps necessary to avoid the entry of judgment against Vassey. In so doing, respondent violated RPC 1.3. Moreover, respondent failed to notify Vassey of the entry of the judgment and the writ of execution, in violation of RPC 1.4(a). Vassey first learned of those developments when there was a levy on his bank account. Finally, the DEC was correct to dismiss the allegations of a violation of RPC 1.16(d), as there is no evidence that respondent failed to return that file in a timely manner.

In both Inverness and Encore, respondent repeatedly refused to cooperate with the DEC and the OAE in the investigation of the matters, in violation of RPC 8.1(b). Respondent explained that he "was working on murder trials....fighting to keep people out of jail" and that the ethics matters "simply slipped [his] mind." Respondent did nothing, however, to alert anyone to those circumstances.

In Groff, the magistrate exposed respondent's conduct in great detail. That respondent blamed his client, other attorneys – including former co-counsel – the judge and the defendants is not surprising. In fact, in his answer, respondent implicated the ethics authorities in a sweeping conspiracy "sought for purposes of revenge, retaliation and as part of an effort to chill the Respondent from pursuing Civil Rights Violations on the part of Respondent's clients." None of respondent's protestations ring true or change the fact that he failed to expedite the litigation, in violation of RPC 3.2. Indeed,

eighteen months after the filing of the civil rights complaint, the plaintiff had not yet been produced for deposition. We found that respondent's conduct in this context violated RPC 3.4(d).

With respect to the alleged violation of RPC 8.4(a) (assisting or inducing another to violate the Rules of Professional Conduct) in Groff, the DEC found that respondent "assisted his client in pursuing frivolous and improperly motivated actions and demands." However, the evidence here is equivocal. The magistrate stated that Groff's case may have had some merit. Therefore, we dismissed that charge.

Lastly, respondent kept the ethics authorities in the dark from the outset of the Groff matter, in December 1998, by refusing to reply to the OAE's request for information about the grievance and, after an extension was granted, failing to reply at all. Also, respondent filed his answer in August 1999, almost four months after the complaint had been filed. Respondent's only explanation was that he was busy with other pressing cases and that it had "slipped [his] mind." Thus, we found a violation of RPC 8.1(b).

In sum, in Canon, respondent violated RPC 1.16(d), RPC 3.4(c) and RPC 1.4(a). In Arnold, respondent violated RPC 8.4(d). In Vassey/Inverness and Vassey/Encore, respondent violated RPC 1.3, RPC 1.4(a) and RPC 1.16(d). Finally, in Vassey/Inverness, Vassey/Encore and Groff, respondent failed to cooperate with ethics authorities, in violation of RPC 8.1(b). Our review of the record compels us to

conclude that respondent's actions were motivated by arrogance toward his clients, courts and disciplinary authorities. We found no contrition or remorse for his actions. Instead, he refused to acknowledge any personal wrongdoing, shifting the blame to others.

Ordinarily, misconduct of this sort, where an attorney's disruptive or improper behavior is combined with other violations such as ignoring court orders, will result in the imposition of a reprimand or a short suspension. See, e.g., In re Hartmann, III, 142 N.J. 587 (1995) (reprimand where the attorney intentionally and repeatedly ignored court orders to pay opposing counsel's legal fee and who, in a separate case, engaged in discourteous and abusive conduct toward a superior court judge with the purpose of attempting to intimidate the judge into hearing his clients' matter that day); and In re Lesser, 139 N.J. 233 (1995) (three-month suspension; in handling collection cases for a dental office, the attorney improperly withheld collected funds and information about those collection matters from the client because, the attorney alleged, he required information from that office about his compensation for those matters.) Lesser, like this respondent, also exhibited a cavalier attitude toward his client's property and refused to reply to the client's legitimate requests for information about the collection matters. Finally, as here, Lesser failed to accept any responsibility for his wrongdoing, placing the blame on other individuals. Were it not for respondent's otherwise unblemished disciplinary record, we would have imposed more

severe discipline. For the totality of respondent's misconduct, we unanimously determined to impose a reprimand, with a stern warning that any further misconduct by him will result in harsher discipline. Two members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Samuel A. Malat
Docket No. DRB 01-218

Argued: September 13, 2001

Decided: January 30, 2002

Disposition: Reprimand

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

Robyn M. Hill 2/26/02
Robyn M. Hill
Chief Counsel