SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-454

IN THE MATTER OF	:	
THOMAS BENITZ,	:	Decision
AN ATTORNEY AT LAW	:	

Argued: February 5, 1998

Decided: November 2, 1998

William Brigiani appeared on behalf of the District VIII Ethics Committee ("DEC").

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District VIII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1975 and maintains a law office in Middlesex, Middlesex County. Respondent has no prior ethics history.

* * *

The Terranova Matter

The complaint alleged violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); RPC 3.2 (failure to expedite litigation); RPC 7.1(a)(1) (communications concerning a lawyer's services); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In or about 1988 Cynthia Terranova retained respondent to represent her in a personal injury matter arising out of injuries sustained in an automobile accident. After respondent filed suit in Terranova's behalf, the case proceeded apace through at least early 1990.

Terranova testified at the DEC hearing that respondent's last correspondence with her was in August 1990. According to Terranova, when the case was not progressing she called respondent to obtain information about the matter. The dates of those calls are uncertain. On January 21, 1993 she visited respondent's office and made an appointment to meet with him on January 26, 1993. At the January meeting respondent apparently promised to do what he could to expedite her case. Hearing nothing more from respondent in the ensuing months, she sent a series of five letters to respondent demanding information. Respondent later admitted that those letters were received by his office. The letters span the period from November 1993 to January 1995. According to Terranova, respondent never answered any of the letters or gave the information she sought about the case.

Finally, in late 1994 or early 1995 Terranova sought new counsel to represent her. In April 1995 her new attorney informed her that the case had been dismissed on August 7, 1990 for failure to answer interrogatories. Terranova testified that she had answered the interrogatories and had returned them to respondent less than one week after she received them.

For his own part, respondent testified that his secretary from February 1990 to February 1991, Lisa Santos, was responsible for the problems in the case. According to respondent, Santos had personal problems that affected her work to such a degree that she had prepared bills for clients and never sent them, had placed a $25,000 settlement check in her desk drawer without telling him and had put blank sheets of paper in envelopes, addressed them, placed postage on them and never mailed them. Respondent claimed that, after he found numerous piles of unfinished work in Santos' work area, he discharged her in 1991. Samples of envelopes containing blank sheets of paper and respondent's office postage meter's stamp were admitted into evidence. Those envelopes, however, were addressed to entities unrelated to Terranova's case. Indeed, there is no evidence to show that Santos undermined this particular case. Nonetheless, respondent declared that Santos never sent Terranova's answers to interrogatories to defense counsel.

Respondent had no recollection of important aspects of the case. He did not recall reading any of Terranova's letters, acknowledging that they were of such a nature that they would, in the normal course of events in the office, have been brought to his attention for

action. Respondent did not recall seeing a notice of dismissal in the case. He claimed that he first became aware of the dismissal from Terranova's new attorney. He did not recall reviewing the file at any time to ascertain the status of the case. The only correspondence in the file from respondent to Terranova spans the time period from December 1994 to August 1995, after new counsel became involved in the case. Respondent asserted that, at the time of the problems in this case, he had approximately 4000 active files in the office and, that as a sole practitioner, he had delegated more of his duties to Santos and another employee, Pat Runyon, than was prudent. Respondent admitted that he had ultimate responsibility for their actions.

Respondent also testified that the trial court had generated trial notices in Terranova's matter well into 1995, leading him to believe that the matter was still pending, even after Terranova's new attorney advised him that the case had been dismissed in 1990.

Ultimately, Terranova brought a malpractice action against respondent and obtained a default judgment in the amount of $45,000. Respondent has not paid the judgment to date.

The Biggs-Klock Matter

The complaint alleged violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); RPC 3.2 (failure to expedite litigation); RPC 3.4(a) (fairness to opposing party and counsel); RPC 7.1 (communications regarding

a lawyer's services); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In or about March 1987 Jennifer Biggs-Klock retained respondent to represent her in an action arising out of injuries sustained in an automobile accident. Although respondent filed suit in Biggs-Klock's behalf, the suit was dismissed in December 1988 for failure to answer interrogatories.

Biggs-Klock testified that she returned the answers to interrogatories to respondent within days of her receiving them, early in the case. She further testified that she had spoken to respondent on several occasions after December 1988 about her case and that respondent never told her that the case had been dismissed. Indeed, more than two months after the dismissal of the case, on February 16, 1989, respondent wrote to Biggs-Klock about the status of the case. The letter did not indicate that the case had been dismissed. It appears that that letter was respondent's last communication with Jennifer until approximately 1994. Biggs-Klock testified that, between her receipt of respondent's letter and 1994, she made unsuccessful periodic attempts to obtain information about her case. In 1991 and 1992 when Biggs-Klock happened upon respondent at a local baseball game, she inquired about her case. Despite the fact that the case had previously been dismissed, respondent allegedly told her that at times matters took time to resolve, counseling her to be patient. Biggs-Klock later believed that respondent had lied to her at the baseball game when discussing the status of the case.

According to Biggs-Klock, she first learned of the dismissal in December 1993 when she had called the court to ascertain the status of her case. With that information in hand, and having heard nothing of substance from respondent since 1989, Biggs-Klock retained new counsel to represent her. By letter to respondent dated December 20, 1993 she requested that respondent turn over her entire file to her new attorney.

After Biggs-Klock's new attorney determined that the statute of limitations on her personal injury action had expired, he filed a malpractice claim against respondent. Biggs-Klock obtained a default judgment against respondent in the approximate amount of $22,000, which has not been paid to date.

Respondent, in turn, blamed Santos and Runyon for the mishandling of Biggs-Klock's case. As with the Terranova matter, respondent had no clear recollection of many aspects of this case. He also did not recall speaking to Biggs-Klock about her case at a baseball game. He did not recall seeing a notice of dismissal in the file. He denied signing the February 16, 1989 letter to Biggs-Klock, claiming that his name was signed by either Santos or Runyon, as indicated by illegible initials after his name. Respondent did not refute Biggs-Klock's version of the events and admitted having given Santos and Runyon too much authority over his caseload. Respondent summed up his view of the case as follows:

> You guys are in law offices, you know how things are done. You have people that work for you and you trust the people that work for you.[1]

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[1] T refers to the transcript of the DEC hearing conducted on June 16, 1997.

* * *

Without elaborating on the basis for its findings, the DEC found violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4(a) in both Terranova and Biggs-Klock.

* * *

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

Respondent essentially did not refute his clients' versions of the events in either Terranova or Biggs-Klock. He blamed Santos and Runyon for the problems in both cases. Santos, however, was employed with respondent for one year only, from February 1991 to February 1992. That was only a portion of the relevant time period for these two cases. In addition, even if Santos and Runyon were responsible for some of the problems in these matters, respondent had a duty to manage the progress of the cases. As a sole practitioner, respondent alone was responsible for the handling of the matters. He cannot, thus, escape responsibility by placing the blame on his employees.

With regard to the allegations of gross neglect, in Terranova respondent failed to file the answers to interrogatories, resulting in the dismissal of the case. Respondent argued that,

because he received trial notices up until 1995, he had assumed that the case was on track. Obviously, respondent never reviewed the file after 1990 to determine the status of the case. Had he done so, he would have discovered that answers to interrogatories had not been given to his adversary and that the case had been dismissed for his failure to do so. Respondent's duty to ascertain the true status of the case was further heightened by his client's repeated requests for information about the case. For all of these reasons, the Board found that respondent violated RPC 1.1(a) and RPC 1.3. In Biggs-Klock, respondent again failed to file answers to interrogatories, resulting in the dismissal of the case. Apparently, respondent did no further work in the case after 1989. From then until early 1994 respondent apparently had no idea where the case stood and that it had been dismissed. The Board found that respondent's misconduct in this regard was in violation of RPC 1.1(a), RPC 1.3 and RPC 3.2.

With regard to the allegations of failure to communicate, in Terranova it appears that respondent periodically sent correspondence to Terranova from about 1988 to 1990. Terranova was forced to write a series of letters to respondent in late 1993 in an effort to get information about the case, to no avail. Finally, in November 1994 Terranova retained a new attorney only to find that her case had been dismissed in 1990. In Biggs-Klock, too, respondent communicated with his client for the last time in 1989. Yet his client requested information about her case for years after that. It was not until Biggs-Klock resorted to self-help in late 1993, by calling the trial court clerk's office about her case, that she first learned

that her case had been dismissed years earlier. The Board finds, thus, that respondent violated RPC 1.4(a) in both matters.

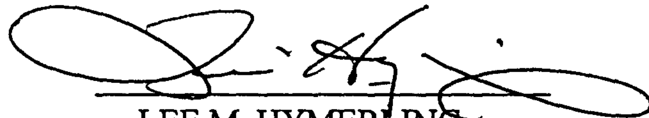
There remains the issue of respondent's alleged misrepresentations to his clients in Terranova and Biggs-Klock regarding the dismissal of their respective cases. Allegedly, respondent misrepresented to Terranova and Biggs-Klock that their respective cases were active when, in fact, they had each been dismissed. There is no clear and convincing evidence, however, that respondent was aware that either of the cases had been dismissed until long after he had ceased communicating with his clients. Indeed, it appears that respondent was unaware of the developments in both matters. Accordingly, the Board dismissed the charges of violations of RPC 8.4(c) in both matters. Likewise, the Board dismissed the allegations of violations of RPC 3.4(a) (fairness to opposing party and counsel) and RPC 7.1 (communications regarding a lawyer's services) as inapplicable. Finally, the Board dismissed the allegation of a pattern of neglect, in violation of RPC 1.1(b), as the rule is normally invoked where there are at least three instances of gross neglect.

Discipline ranging from an admonition to a reprimand is generally appropriate for misconduct of this sort, where only a few matters are involved. See, e.g., In the Matter of Aslaksen, DRB 95-391(1995) (admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in one matter. In a medical expert malpractice case, the attorney failed to serve answers to interrogatories, retain medical expert or advise client of ultimate dismissal, despite client's requests for information.); In the Matter of

Onorevole, DRB 94-294(1994) (admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in an insurance matter); In re Carmichael, 139 N.J. 390(1995) (reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two matters. The attorney had a prior private reprimand); In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters and with a failure to communicate in a third matter); and In re Gordon, 121 N.J. 400(1990) (reprimand imposed where the attorney showed gross neglect and a failure to communicate in two matters). While the Board considered the absence of prior discipline over a twenty-two year career in mitigation, that factor was counterbalanced by the high degree of harm to the clients here. As such, the Board unanimously determined to impose a reprimand.

The Board further required that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative expenses.

Dated: 11/2/98



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

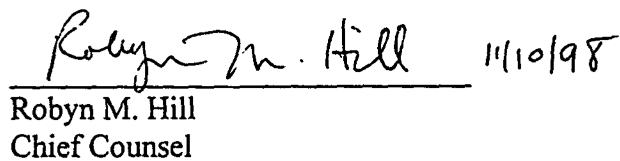
In the Matter of Thomas Benitz
Docket No. DRB 97-454

Argued: February 5, 1998

Decided: November 2, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz							x
Thompson			x				
Total:			8				1



Robyn M. Hill
Chief Counsel