SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-342

IN THE MATTER OF

VINCENT E. BEVACQUA

AN ATTORNEY AT LAW

Decision

Argued: December 20, 2001

Decided: April 19, 2002

David Howard Stein appeared on behalf of the District VA Ethics Committee.

Thomas Ashley 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 the District VA Ethics Committee ("DEC"). Three separate complaints charged respondent with the following ethics violations: Docket No. VA-99-012E (the Annan matter) – RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information), RPC 1.4(b) (failure to explain matter to extent reasonably necessary to permit client to

make informed decision about the representation) and RPC 1.5(b) (failure to provide client with written retainer agreement); Docket No. VA-99-036E (the Garrett matter) – RPC 1.1(a) (gross neglect), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(b), RPC 1.16(d) (upon termination of representation failure to surrender papers to client) and RPC 5.5(b) (assisting in the unauthorized practice of law) (count one); RPC 8.1(a) (knowingly making a false statement of fact in a disciplinary matter) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count two); and Docket No. VA-00-010E) (the Hicks matter) – RPC 1.1(a), RPC 1.3, RPC 1.4(a) (count one) and RPC 1.1(b) (pattern of neglect) (count two).

Respondent was admitted to the New Jersey bar in 1990. At the relevant times he maintained a law office in Newark, New Jersey.

The Annan Matter – Docket No. VA-99-012E

Respondent was a partner with the former law firm of Winkler, Bevacqua, Simmons and Green, P.C. In February 1995, Edward Annan retained respondent to represent him in connection with a "Lemon Law" complaint that he had personally filed on February 2, 1995 with the Division of Consumer Affairs, Lemon Law Unit (the "Division"). Respondent did not provide Annan with a retainer agreement.

Prior to consulting with respondent, Annan had already returned the vehicle to the dealership in December 1994. Since Annan had purchased an extended warranty plan, arrangements were made to have the warranty refund applied against the vehicle loan, which covered eight monthly payments.

Because the Lemon Law claim filed by Annan was on the wrong form, on April 12, 1995, respondent refiled the claim. After the Division notified respondent that the form was deficient, he assigned Courtney Benson, a college student who worked in his office, to assist Annan on refiling the claim. Although Benson assured respondent that he had taken care of the matter, on November 12, 1995, the Division informed respondent that Annan's claim had been rejected because of his failure to cure the deficiencies. The letter stated that Annan could, nevertheless, start a suit in another forum.

Respondent never notified Annan that his claim had been rejected. Annan only learned of its dismissal when he called the Division directly.

Annan claimed that, once he returned the car to the dealership, he believed that he was not required to continue paying off the loan because the car was no longer in his possession. He explained his position to respondent, who disagreed. When Annan told respondent that he had obtained the loan from Motor World, not Chrysler Credit Corporation ("Chrysler"), who apparently had taken over the loan, respondent offered to communicate this position to Chrysler. Annan heard nothing further until the eight months of prepaid loan payments ran out. In November 1995, Chrysler sued Annan for breach of the installment loan agreement.

Respondent agreed to file an answer in that suit, but did not discuss any additional fees with Annan. Initially, respondent took the necessary steps in defense of the litigation. He filed an answer to the complaint and joined Motor World as a party to the action. Annan testified that he periodically called respondent about the status of his case, but would always be referred to another attorney.

First, Cheryl Retford took over the case. She accompanied Annan to a mediation conference. The conference, however, was adjourned because the attorney from Motor World was unprepared. Shortly afterwards, Retford left the firm.

Next, James White became involved in the case. According to Annan, White was the only attorney who explained the matter to him. Nevertheless, Annan never received a status report, any letters or an itemized bill from respondent's office.

A second mediation conference was scheduled for June 1997. Annan's attendance was not required. No one from respondent's office appeared at the conference.

As of the date of the third mediation conference, White, too, had left the firm. Respondent was to attend the third mediation conference. Annan and the attorneys for Motor World and Chrysler waited for respondent at the courthouse for a considerable length of time. Eventually, the attorneys went to see the judge to seek the striking of Annan's defenses. Respondent showed up later and claimed that he had gone to the wrong courtroom. Respondent succeeded in having Annan's answer reinstated, but was first ordered to pay attorneys' fees to Motor World and Chrysler.

James White testified that he worked for respondent's firm for only three or four months. He was assigned to work for respondent, but left because of the lack of supervision and instruction. White stated that respondent would not take calls from his clients and that the calls were routed to others.

Respondent, in turn, admitted that Benson, the college student, had been assigned to handle Annan's claim. He explained that Benson and Annan had a close relationship and that Benson was acting as an "intermediary" between himself and Annan.

Respondent's excuse for missing the second mediation conference had to do with medical problems experienced by a seventeen-year old employee. Respondent claimed that, on the morning of the mediation conference, he had unsuccessfully attempted to help the employee get medical attention, which respondent conceded was not an emergent situation. Respondent added that eventually it became too late to get to the courthouse.

Respondent admitted that he had no excuse for his tardiness at the next scheduled mediation conference. By the time he arrived, opposing counsel had already left. When a new mediation date was set, he sent another attorney in his place. The plaintiffs, who were unwilling to settle, filed a motion for summary judgment, which was granted in May 1998. Respondent did not advise Annan of the motion or of its outcome. In the fall of 1998, when Annan obtained his credit report, he found out that an $11,078 judgment had been entered against him.

As to the Lemon Law claim, respondent admitted that it was not handled competently; that, at times, he did not return Annan's telephone calls; and that he did not provide Annan with a retainer agreement.

The Garrett Matter – District Docket No. VA-99-036E

In April 1996, Raleigh Garrett met with respondent about a lawsuit filed against his company, Spectra Micrographics, Inc. ("Spectra"), by Fuji Photo Film U.S.A., Inc. ("Fuji"). Fuji sought the payment of $132,925.27 for goods sold and delivered to Spectra, a Pennsylvania company.

Garrett contended that Fred Van Stan, a Fuji sales representative, had induced him to enter into a commercial relationship with a third party, Microform, Inc. ("Microform"), a Pennsylvania firm. According to Garrett, Van Stan represented to him that Microform was a trustworthy entity. Van Stan orally promised Garrett that Fuji would guarantee payment for goods sold to Microform. As a result, Spectra bought goods from Fuji and delivered both Fuji and non-Fuji products to Microform.

Several years later, when Microform failed to pay for goods purchased from Spectra, Fuji discontinued guaranteeing Microform's payments through chargebacks ["discount after terms"] and DEDs ["deductions."]. 4T98-99[1]. In other words, Spectra had been paying less for products purchased from Fuji than was shown on the invoices.

Garrett explained that the reason he hired respondent was that, after interviewing other New Jersey attorneys, respondent was the only attorney to state that the oral agreement with Fuji was enforceable in New Jersey. It was Garrett's understanding that respondent would file a counterclaim against Fuji and Van Stan and possibly a third-party claim against Microform. During their initial meeting, Garrett paid respondent a $4,000 legal fee. Respondent did not prepare a written retainer agreement. Moreover, he did not submit any bills to Garrett for services rendered.

Although respondent filed an answer to Fuji's complaint, he did not file a counterclaim or third-party complaint. Respondent believed that, if he transferred the case to federal court, he could bring in Microform as a third-party defendant, which was not feasible otherwise because of lack of personal jurisdiction. Respondent, thus, filed a

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[1] 4T denotes the transcript of the February 21, 2001 DEC hearing.

notice of motion to transfer the case to federal court. Upon receipt of the notice of motion, Fuji's counsel informed respondent that the notice of removal was defective under applicable federal law because it had not been timely filed. Counsel indicated that she would seek sanctions under F.R.C.P. 11. Respondent then withdrew his motion.

As the case proceeded, respondent prepared and served interrogatories on the plaintiff. However, the plaintiff objected to the interrogatories. Problems with the interrogatories continued for over one year. Ultimately, respondent's efforts to revise them were unsuccessful. The plaintiffs did not answer the interrogatories. Garrett testified that he was not aware of the problems until he obtained his file from respondent. In addition, respondent failed to answer the interrogatories propounded on Garrett. As a result, in October 1997, the court entered an order imposing sanctions against Garrett. Again, Garrett was unaware of the sanctions until he obtained his file from respondent.

Although respondent did not conduct any depositions, Garrett was deposed for two days in October 1997. The depositions took place in respondent's office. Respondent assigned Jonathan Sander to prepare Garrett and to appear at the deposition. At the time of the deposition, Sander was not a member of the New Jersey bar or any other. He was not admitted to the New York bar until May 1998. Sander worked for respondent's firm for approximately four months in 1997.

Sander testified that the deposition took place in respondent's firm's conference room. Respondent was not present and never entered the room. Sander thought that

respondent was down the hall in his own office, possibly "fifty feet away." 3T15[2]. Sander believed that he entered his appearance at the deposition without clarifying that he was not a member of a bar. 3T33.

In response to the grievance in this matter, respondent stated that Sander was admitted in both New York and New Jersey. Exhibit 3 to CA-6. At the DEC hearing, however, respondent admitted that he knew that Sander was not admitted in New Jersey. He claimed that he believed, however, that Sander was admitted in New York at the time of the deposition.

In early 1997, respondent wrote a letter to Garrett stating that he could not rely on a verbal agreement to defend his position and recommended that Garrett settle the case for approximately $85,400. Garrett attempted to call respondent, who would not take his calls. Garrett, therefore, spoke to Sander, who informed him that respondent thought that Garrett had lied about the information he had given respondent. Garrett's Pennsylvania counsel advised him to find a new attorney to handle the matter.

According to Garrett, near the end of November 1997, he wrote to respondent terminating his services and requesting his file. Respondent did not reply to his letter. After several letters from Garrett's Pennsylvania attorney, respondent released part of the file in January 1998 and the remainder in the spring of 1998. After reviewing the file, Garrett learned that a trial date had been set for March 25, 1998. Respondent had not informed him of the trial. Garrett also learned that sanctions had been imposed against

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[2] 3T denotes the transcript of the afternoon of the January 16, 2001 hearing.

him for failure to answer interrogatories. Garrett paid the sanctions, but was not reimbursed by respondent until after he filed the ethics grievance.

The Fuji matter was settled by Garrett's new attorney for $59,000.

Respondent prepared a bill for the Spectra matter, only after it was requested by the Office of Attorney Ethics ("OAE"). According to respondent, he gathered from the file yellow pieces of paper on which information had been written and consolidated the information to prepare the bill. Afterwards, he did not keep the slips of paper. The bill contained several errors, including wrong dates for some of the entries, time charges for James White, prior to his employment with the firm, expenses for filing a complaint – when only an answer was filed (the filing fee for the answer was less than that reflected on the statement) – and a missing entry for time spent by Jonathan Sander at the deposition.

For his part, respondent testified that he was unaware that Sander was not a licensed attorney when he appeared at the Garrett deposition. According to respondent, he knew that Sander was inexperienced, but assumed that he had passed the New York bar exam. He claimed that, because of Sander's inexperience, he was monitoring the deposition by speakerphone. Respondent stated that Sander was just "a live body to sit there." Respondent did not anticipate that there would be much objectionable material during Garrett's deposition. He claimed that he could hear the entire deposition from the speakerphone. Respondent further asserted that Sander was instructed not to ask questions during the deposition and that if, something was objectionable, to interrupt the deposition to confer with respondent.

Respondent conceded that he had not scheduled the plaintiff's depositions, but apparently attributed this failure to the fact that he had been discharged right after Garrett's deposition.

Respondent stated that, when he agreed to represent Garrett, he believed that he would be able to prove the existence of an oral agreement from Fuji's invoices and that Garrett would be able to furnish him with the proper documentation to support the agreement. However, respondent contended, the documentation that Garrett had given him was voluminous and indecipherable. Respondent also asserted that he initially was unaware that some of the products that Microform purchased from Spectra were non-Fuji products. Respondent asserted that, based on the information that Garrett had given him, he concluded that Garrett could not prevail at trial and, thus, recommended that Garrett settle the case.

Respondent blamed the delay in releasing Garrett's file on a broken copy machine and on the large size of the file.

Respondent admitted that there were mistakes in the Garrett bill. He attributed it, in part, on the number of attorneys that had come and gone from his firm and on trying to recall who had performed which services; he knew that work had been done, but could not find billing slips correlating the work to a particular associate. Respondent claimed that the mistakes in the bill were oversights.

The Hicks Matter – District Docket No. VA-00-010E

At the time of the DEC investigation of the Hicks matter, respondent was a sole practitioner in South Orange, New Jersey.

Marilyn Hicks retained respondent in September 1994 for a personal injury claim. She had broken her ankle when she fell on property owned by the Newark Housing Authority. Respondent accepted the matter on a contingency basis and had Hicks sign a retainer agreement.

For a while, the case proceeded apace. Respondent filed the complaint on August 30, 1996, prior to the expiration of the statute of limitations, after his efforts to settle the claim proved unsuccessful. Thereafter, either respondent or an associate propounded and answered interrogatories. Medical records were obtained and Hicks was deposed.

On November 8, 1997, the defendant filed a motion for summary judgment, returnable on December 19, 1997. The court's copy of the motion papers and filing fees was mistakenly forwarded to respondent. Respondent neither opposed the motion nor called the court or his adversary to determine whether the papers had actually been filed. Moreover, respondent did not appear at a mandatory arbitration scheduled for January 13, 1998. On December 19, 1998, the court had already granted the motion for summary judgment, noting that it had been unopposed.

According to respondent, he was confused because he had received the court's papers for the motion. Therefore, he claimed, he believed that the arbitration was still pending in January. He stated that he had not attended the arbitration because he was ill.

Respondent could not recall the cause of his illness. Neither he nor anyone from his office called the court to obtain an adjournment of the arbitration.

In January 1998, Kimberly Tyler, an attorney, joined respondent's firm and tried to have Hick's case reinstated. She filed several unsuccessful motions. She misunderstood the reason for the dismissal and tried to have the complaint reinstated on the basis that the failure to appear at the arbitration should be excused. The court denied Tyler's motion.

Hicks testified that, after her initial visit with respondent, she went to his office on several occasions because he would not reply to her telephone calls. She recalled talking to Tyler on one occasion, although she did not remember discussing the case with her. Hicks also remembered being represented by a male attorney at the deposition. Hicks claimed that, although she spoke to respondent a few times, she was, for the most part, unable to speak to him. The secretary generally informed her that respondent was either at a meeting or would return her calls, but he did not.

No one from respondent's firm told Hicks that her case had been dismissed. She learned of the dismissal from the OAE investigator, after she filed a grievance against respondent.

Hicks stated that the last time she spoke with respondent was just before she filed the ethics grievance. She claimed that, during that conversation, respondent told her that he would have to go to court and "fight the case," assuring her that she should not worry about it. According to the OAE investigator, Hicks was concerned that respondent had

already settled her case and had kept the money. Hicks also complained that respondent did not notify her of his new address.

* * *

In the Annan matter, the DEC found that respondent's failure to properly prosecute the Lemon Law claim by allowing it to lapse, as well as his failure to appear at one mediation conference and his tardiness at another, violated RPC 1.3.

The DEC also found a violation of RPC 1.4(a), in that respondent failed to inform Annan that his Lemon Law claim had been rejected or to apprise him of the status of the Chrysler case, including the entry of the judgment against him. In addition, the DEC found a violation of RPC 1.4(b) because respondent's failure to inform Annan of actions being taken against him precluded him from participating in his own defense. Finally, the DEC found a violation of RPC 1.5(b), based on respondent's failure to provide Annan with a written retainer agreement.

In the Garrett matter, the DEC did not find clear and convincing evidence that respondent violated RPC 1.1(a). However, the DEC found a violation of RPC 1.3, in that respondent did not proceed with reasonable diligence in defending the Fuji action by failing to obtain discovery from Fuji, failing to timely reply to Fuji's discovery requests — thereby causing the imposition of sanctions against Garrett — and failing to insure that Garrett was properly represented at his deposition. The DEC was unable to conclude that respondent participated at the deposition by way of open telephone line.

The DEC also found violations of RPC 1.4(a) and (b), based on respondent's failure to apprise Garrett of the status of discovery requests propounded by the plaintiff, of the sanction imposed for discovery violations and of trial notices.

The DEC further determined that respondent violated RPC 1.5(b) by failing to provide a written retainer agreement to Garrett. Finally, the DEC found a violation of RPC 1.16(d) for respondent's failure to return Garrett's file for more than two months, at a time when the matter was scheduled for trial.

Although the DEC specifically rejected respondent's argument that he attended the deposition by conference phone hook-up, it did not find a violation of RPC 5.5(b). The DEC concluded that respondent's conduct did not constitute assisting an individual in the unauthorized practice of law, within the intent of this RPC, even though it found that respondent permitted an unlicensed lawyer to appear at Garrett's deposition and that Sander's appearance at the deposition was the unauthorized practice of law.

Similarly, the DEC did not find violations of RPC 8.1 or 8.4(c). It concluded that the billing statement that respondent tendered to the OAE was egregiously in error and that respondent's statement that he believed that Sander was admitted to practice in New York was inaccurate and inconsistent with other statements made in the course of the proceedings. The DEC found, however, that these statements were not knowingly false and, therefore, did not constitute conduct involving fraud, deceit or misrepresentation.

Finally in the Hicks matter, the DEC did not find a violation of RPC 1.1(a), even though it noted that, after the filing of the summary judgment motion, respondent's handling of the Hicks case was careless and dilatory. The DEC found a violation of RPC

1.3, in that respondent failed to prepare and submit appropriate opposition papers to the summary judgment motion and failed to take appropriate action to have the case reinstated, after summary judgment was granted. The DEC also found a violation of RPC 1.4(a) because respondent failed to notify Hicks that a summary judgment motion had been filed and that a judgment had been entered against her. According to the DEC, his failure to inform her of these case developments deprived her of an opportunity to seek other counsel to prosecute a timely application to vacate the court's order or to file an appeal.

Finally, the DEC found that respondent engaged in a pattern of neglect in representing the above clients.

Based on these findings, the DEC recommended the imposition of a reprimand and a proctorship.

* * *

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

For the most part, the DEC findings were proper. It is undisputed that respondent failed to provide Annan with a retainer agreement, in violation of RPC 1.5(b), and failed to keep him apprised of the status of his matters, in violation of RPC 1.4(a), thereby precluding him from making decisions about the representation, in violation of RPC 1.4(b).

Initially, respondent met with Annan and did some work on the case. Afterwards, the matter was handled by a series of attorneys who came and left respondent's firm. Clearly, respondent failed to properly supervise those attorneys. Moreover, he permitted Benson, a non-attorney, to perform some functions in connection with Annan's Lemon Law claim. While those functions may have been ministerial, respondent nonetheless had a duty to supervise Benson to ensure that the form was properly completed and filed with the Division of Consumer Affairs. Respondent's failure to supervise Benson and the attorneys that worked on the Chrysler lawsuit caused both matters to be dismissed. Respondent also prevented an associate from attending a mediation conference and was late for another conference. Respondent's failure to notify Annan that the Lemon Law claim had been rejected and that a judgment had been entered against him by Chrysler caused Annan to suffer irreparable harm. Respondent's conduct, thus, violated RPC 1.3 and rose to a level of gross neglect. Even though this charge was not listed in the complaint, the complaint is amended to conform to the proofs. See In re Logan, 70 N.J. 22, 232 (1976).

In the Garrett matter, the DEC properly found violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(b) and RPC 1.16(d). The DEC did not find a violation of RPC 1.1(a). Clearly, from the outset respondent should have declined to represent Garrett. During the initial consultation, respondent advised Garrett that an oral agreement could be upheld in New Jersey. Much later respondent concluded that he could not prove the existence of an oral agreement between Van Stan and Garrett. It cannot be determined from the record whether respondent failed to properly evaluate the case from the outset or

whether Garrett misled him as to the true facts. Thus, the DEC properly concluded that there was no clear and convincing evidence of a violation of RPC 1.1(a).

The DEC did not find a violation of RPC 5.5(b), based on its interpretation that the rule was not intended to apply to this type of situation. We disagree. Respondent was well aware that Sander was not admitted to practice law in New Jersey. That fact is not in dispute. Whether or not respondent properly believed that Sander was admitted to practice in New York, Sander could not enter an appearance in this state, and mislead others that he was licensed to practice in New Jersey. Also, the DEC concluded that respondent did not participate in the deposition by way of telephone line. We found, thus, that respondent permitted a non-licensed attorney to practice law in New Jersey, in violation of RPC 5.5(b).

Finally, as to the charges of RPC 8.1(b) and RPC.8.4(c), the DEC properly concluded that the facts presented did not rise to the level of clear and convincing evidence.

In the Hicks matter, the DEC properly found violations of RPC 1.3 and RPC 1.4(a). The DEC, however, did not find a violation of RPC 1.1(a). The fact that Hicks' complaint was dismissed and that respondent's firm failed to take appropriate action to have it reinstated rose to the level of gross neglect, a clear violation of RPC 1.1(a).

Finally, the DEC properly found a violation of RPC 1.1(b) for respondent's conduct in all three matters.

Generally, in cases involving similar violations, either a reprimand or a short-term suspension is imposed, where the attorney has no disciplinary record. See In re Porwich,

159 N.J. 511 (1999) (reprimand where, in four matters attorney engaged in gross neglect, lack of diligence, failure to communicate, failure to cooperate with ethics authorities and misrepresentation); In re Gruber, 152 N.J. 451 (1998) (reprimand for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with the OAE's request for information); In re White, 150 N.J. 16 (1997) (three-month suspension where, in three matters, attorney engaged in pattern of neglect, lack of diligence, failure to communicate and misrepresentation).

Here, respondent also failed to provide retainer agreements, to promptly turn over a client file and assisted an individual in the unauthorized practice of law. We have carefully reviewed respondent's conduct and have considered that this was his first brush with the ethics system. We have also given weight to respondent's counsel's argument that respondent was admitted to practice in 1990 and then, as an inexperienced attorney, started a law firm only four years later. The firm hired inexperienced attorneys to whom much responsibility was delegated without proper supervision. Finally, we found that respondent's conduct in these matters involved poor judgment, not venality. We, therefore, unanimously determined that a reprimand is adequate discipline for respondent's ethics infractions. One member recused himself.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent E. Bevacqua
Docket No. DRB 01-342

Argued: December 20, 2001

Decided: April 19, 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:			8			1	

Robyn M. Hill 4/29/02
Robyn M. Hill
Chief Counsel