SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 98-265, 99-391, 00-021, 00-024 and 00-071

IN THE MATTER OF :

ARTHUR N. MARTIN, JR. :

AN ATTORNEY AT LAW :

Decision
Default [R. 1:20-4(f)(1)]

Decided: October 18, 2000

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

Pursuant to R.1:20-4(f), the District V-A Ethics Committee ("DEC") certified the record directly to us for the imposition of discipline, following respondent's failure to file answers to the formal ethics complaints.

The five ethics complaints encompass eight different cases and allege violations of RPC 1.1(a) (gross neglect) (three counts), RPC 1.3 (lack of diligence) (eight counts), RPC 1.4(a) (failure to communicate with the client) (seven counts), RPC 1.5(b) (failure to advise the client in writing of the basis or rate of his fee) (two counts), RPC 5.5(a) (unauthorized practice of

law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (six counts), RPC 8.4(d) (conduct prejudicial to the administration of justice) (one count), R. 1:20-20 (b)(10) (failure to advise the client that the attorney has been suspended) (one count) and, finally, RPC 1.1(b) (pattern of neglect).

The DEC served the complaints by regular and certified mail. None of the regular mail was returned. Most of the certified mail receipts were returned, indicating delivery, while some of the certified mail was returned as unclaimed.

When respondent did not file answers to the complaints, the DEC sent second notices to respondent. Again, the regular mail was not returned. Some of the certified mail receipts were returned indicating delivery; the remainder of the certified mail was returned as unclaimed.

As set forth below, respondent eventually filed a motion to vacate the defaults and attached answers to the complaints.[1] In his motion and answers, respondent did not raise any issue of improper service.

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Respondent was admitted to the New Jersey bar in 1973. During the relevant times, he maintained an office in Newark, New Jersey. In 1998, respondent consented to be temporarily suspended from the practice of law, pending the final determination of all grievances against

[1] Although respondent did not file an answer to the complaint in Docket No. DRB 98-265 or specifically include that matter in his motion, we deemed it to be included in the motion.

him. The temporary suspension became effective July 1, 1998. In re Martin, 154 N.J. 17 (1998). Respondent remains suspended to date.

Respondent has an extensive ethics history. In April 1990, he was suspended for six months for grossly neglecting seven cases, negotiating settlements without the clients' authorization, advancing money to clients for personal expenses and displaying a gun during meetings with clients. In re Martin, 118 N.J. 239 (1990).

In January 1991, respondent was suspended for three months for failure to return an unearned portion of a retainer after the case was dismissed, failure to pursue an appeal, failure to adequately communicate with clients in three matters and failure to reply to requests for information by a DEC investigator. The suspension was to run consecutively to the suspension imposed in April 1990. In re Martin, 122 N.J. 198 (1991).

In May 1993, respondent was publicly reprimanded for unethical conduct in three matters, which involved violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4 and RPC 8.4(c). That conduct occurred during the same time as those for which respondent had been previously suspended from practice. In re Martin, 132 N.J. 261 (1993).

In September 1997, we voted to suspend respondent for one year for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5, RPC 8.1(b) and RPC 8.4(c). In the Matter of Arthur N. Martin, Jr., Docket Nos. DRB 96-222 and 96-226 (September 30, 1997). In November 1997, we voted to suspend respondent for three years, consecutively to the one-year suspension, for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5, RPC 1.15(b), RPC 8.1(b) and RPC

8.4(c) (November 18, 1997). In the Matter of Arthur N. Martin, Jr., Docket Nos. DRB 97-062 and 97-064. The Court held these matters in abeyance, together with the default matters mentioned below.

In August 1998, in two default matters, we recommended that respondent be disbarred for misconduct in four cases, his extensive ethics history and his failure to cooperate with disciplinary authorities. In the Matter of Arthur N. Martin, Jr., Docket Nos. DRB 98-028 and 98-099 (August 18, 1998). We noted that respondent's misconduct was similar to that displayed in prior cases. Specifically, between 1994 and 1997, respondent agreed to represent individuals, accepted their money and failed to act on their behalf. His misconduct included violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.16(d) and RPC 8.1(b).

Prior to our consideration of the last matters, respondent's counsel submitted a psychological report and requested that respondent be permitted to answer the charges. Because respondent's counsel did not offer any meritorious defense to the charges, we determined to deny the request and to proceed with the matters.

After we transmitted to the Court our decision recommending that respondent be disbarred, respondent filed with the Court a motion to supplement the record with documents addressing his failure to answer the ethics complaints. By order dated January 12, 1999, the Court directed that the matters, including the motion to supplement the record, be remanded to a special master. The special master has not yet issued a report.

* * *

As noted earlier, on March 8, 2000, respondent filed a motion to vacate the defaults in the matters now before us. According to respondent, he did not answer the complaints in the pending matters because he no longer had an office staff and he had been involved in providing discovery to the Office of Attorney Ethics ("OAE") in connection with the cases remanded by the Court and in replying to new grievances and to fee arbitration matters.

In support of his contention, respondent submitted the OAE's August 30, 1999 request for production of documents, requiring him to produce ten categories of documents by October 12, 1999. Respondent's answers to the ethics complaints in the first two matters, Docket Nos. DRB 98-265 and 99-391, were due before he was served with the OAE's document request. The complaints in the other matters were served after October 12, 1999, the date set by the OAE for respondent's production of documents. Therefore, the OAE's document request in the matters pending before the special master should not have interfered with respondent's ability to answer the complaints in these matters. Moreover, respondent could have requested additional time to answer the complaints, but did not do so.

Respondent's motion did not address the issue of a meritorious defense to the ethics complaints. However, by letter dated April 6, 2000, respondent provided amended answers to all of the complaints, except the matter under Docket No. 98-265.[2] In his answers, respondent

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[2] Respondent sent answers to the complaints to the DEC on February 28, 2000. The DEC returned them to him because the matters had already been certified to the Board as defaults.

denied some of the material factual allegations of the complaints and denied all of the charges that he violated the Rules of Professional Conduct.

The OAE objected to respondent's motion to vacate the defaults, contending that: (1) respondent did not fully cooperate with the OAE's investigation; (2) respondent's explanation for not answering the complaints, i.e., that he was too busy with other ethics and fee matters, is inadequate; and (3) respondent did not provide a meritorious defense to the ethics charges.[3]

We denied respondent's motion to vacate the defaults for the following reasons: (1) respondent failed to timely answer the complaints even after he was sent a second notice; (2) respondent did not advance any valid reason for his failure to answer the complaints; (3) respondent has exhibited a pattern of failure to answer ethics complaints; and (4) respondent has exhibited a pattern and practice of avoiding the resolution of disciplinary matters by his delaying tactics. It has been respondent's practice to ignore the complaints, wait until after the case is scheduled as a default, then seek to vacate the default. In this fashion, respondent has delayed the process of disciplinary cases for months or even years. For example, although we recommended that respondent be disbarred in August 1998 and the Court remanded the matter to a special master in January 1999, the matter has not yet been concluded.

* * *

[3] The OAE also stated that it had written to respondent "at least twice asking him to supply the original client file and a written reply to the allegations. Respondent did not reply to any of the OAE's correspondence to him." In fact, except for Docket No. DRB 98-265, respondent did reply to all of the grievances in these matters and sent the requested files to the OAE investigator.

A. Docket No. DRB 98-265 (District Docket No. VA-97-088)

On or about October 6, 1996, Kevin V. Mitchell retained respondent to represent him in an employment discrimination/civil rights case arising from the termination of his employment at Public Service Electric & Gas Company ("PSE&G"). Mitchell paid respondent a $150 deposit against a $1,000 total fee. Respondent did not provide Mitchell with a written fee agreement.

According to Mitchell, respondent agreed to take his case for a reduced fee of $1,000 because Mitchell had financial problems and had a strong case against PSE&G. Respondent told Mitchell that his legal fee would be recovered if they prevailed in the case. Respondent also advised Mitchell that the case would probably settle and that, if it did not settle, respondent would immediately file suit because of Mitchell's poor financial situation.

On October 25, 1996, Mitchell made an additional payment of $200 toward respondent's fee and, on November 2, 1996, another payment of $300.

On or about November 7, 1996, Mitchell met with Edwin Burks, respondent's investigator. According to Mitchell, he provided Burks, who knew nothing about his case, with a written synopsis of the case.

On November 18, 1996, Mitchell wrote to respondent, providing additional information about the case. He also indicated that he was concerned because respondent had not called him. Mitchell wrote to respondent again on December 17, 1996, indicating that he had been trying

to reach him for "almost a week." Mitchell requested that respondent contact him regarding the status of his PSE&G "case and complaint."

By letter dated January 17, 1997, Mitchell provided respondent with additional information "to assist in the assessment of any potential settlement or jury award." Mitchell sent another letter to respondent, on January 21, 1997, reiterating the terms of the January 17 letter and stressing his financial problems.

By letter dated March 10, 1997, Mitchell advised respondent that he had obtained employment and could pay the remaining $350 fee. Mitchell complained that he had been told "on several occasions prior to this that a complaint was forthcoming from your office and would be in the mail ...." Mitchell also mentioned their "in person" meeting of January 18, at which time respondent had promised that he would "speak to [his] man in the PSE&G legal department ... whom [he] dealt with before about this case, to get some kind of feedback or possible preemptive settlement." Finally, Mitchell stressed that it was "imperative for me to have this complaint and case officially filed, if it cannot be settled, before the statute on it expires."

According to the complaint, respondent misrepresented to Mitchell that he was negotiating with PSE&G to settle the claim. In fact, there had been no settlement negotiations.

Respondent did not reply to Mitchell's March 10, 1997 letter. Mitchell attempted to contact respondent by telephone and by letter on numerous occasions about the status of his

case. Except for the January 18, 1997 meeting mentioned in Mitchell's letter and one telephone call, on February 25, 1997, respondent did not communicate with Mitchell.

On October 9, 1997, respondent filed a complaint against PSE&G. He did not serve the complaint until December 1, 1997, almost two months after it was filed.

The complaint charges that respondent violated RPC 1.3, RPC 1.4(a), RPC 1.5 (b) and RPC 8.4 (c).

B. Docket No. DRB 99-391 (District Docket Nos. VA-98-010 & VA-98-061)

(1) The Williamson Matter

On March 27, 1996, Beverly Williamson retained respondent to represent her in a "sexual harassment/discrimination" civil action against her employer, R. J. Reynolds Tobacco Company, and two individuals. The action had been filed by another attorney. Thereafter, Reynolds' counsel served Williamson with supplemental interrogatories and other discovery and requested that Williamson sign medical release forms. Because respondent did not comply with the discovery requests, despite two letters and two telephone calls, Reynolds' counsel filed a motion to compel discovery. In Reynolds' certification in support of the motion, counsel stated that respondent had promised, in two separate telephone conversations, to provide the outstanding discovery.

On May 30, 1997, the court ordered that Williamson provide discovery by June 30, 1997, lest Reynolds be allowed to apply ex parte for an order dismissing the complaint. Reynolds's counsel served respondent with a copy of the order on June 6, 1997.

By letter dated July 14, 1997, respondent confirmed a telephone conversation with Williamson, in which he told her that Reynolds had offered $20,000 to settle the litigation against Reynolds only. The letter stated, "[a]s I also indicated to you, R. J. Reynolds intends to bring a summary judgment motion to dismiss your complaint prior to any further litigation and especially prior to trial before a jury. I have enclosed a copy of my letter rejecting the offer. I will be speaking with you soon." In his letter, respondent did not tell Williamson about the outstanding discovery or the May 30, 1997 order.

By letter dated July 28, 1997, respondent confirmed that Williamson had picked up her file because she wanted another attorney to review the case. The letter stated that "the defendants are requesting releases entitling them to more information, as well as information pursuant to paragraphs 6 and 9 of the request for production of documents that they are entitled to." Again, respondent did not tell Williamson about the May 30, 1997 order.

On July 29, 1997, Reynolds filed an ex parte application to dismiss the complaint with prejudice. Williamson's complaint against Reynolds was dismissed with prejudice on August 4, 1997. On August 7, 1997, respondent wrote to Williamson to inform her that her case against Reynolds had been dismissed. The letter also stated that "[a]s I indicated to you in my letter to you dated July 28, 1997, there were outstanding matters that had to be addressed immediately.

As a result of your equivocation as to my continued representation and what you wanted to do with the file, it was not done."

Thereafter, Williamson retained another attorney, who was able to have the complaint reinstated.

The complaint charges that respondent violated RPC 1.3 and RPC 1.4(a) in the Williamson matter.

(2) The Brown Matter

On January 4, 1993, Kersandra Brown retained respondent to represent her in connection with her November 1992 termination of employment from NYNEX. Respondent charged Brown $1,500 (of which $1,4000 was paid) to "exhaust all administrative remedies, after which a Right to Sue Notice would be issued, then to institute suit in Federal District Court." On April 19, 1993, respondent submitted a charge of discrimination to the Equal Employment Opportunity Commission ("EEOC"), on behalf of Brown.

On December 20, 1994, respondent requested that the EEOC issue a "Notice of Right to Sue" because the matter had been pending with the EEOC for more than 180 days.

Brown received the EEOC notice on January 28, 1995 and "faxed" it to respondent on January 31, 1995. Brown had ninety days from receipt of the notice to file a complaint against NYNEX.

The ethics complaint charges that respondent promised Brown, in January 1995, that he would immediately file suit in federal court. The complaint also states that, thereafter, respondent told Brown on more than one occasion, that he had filed the complaint.

Brown's complaint against NYNEX was filed one year later, January 2, 1996, in the United States District Court for the Southern District of New York. Although respondent prepared the complaint, it indicated that Brown had filed it pro se. The ethics complaint charged that respondent, not Brown, had filed the federal complaint and that it was not Brown's signature on the complaint.

When the court notified Brown that the complaint was going to be dismissed for failure to serve NYNEX, respondent prepared a certification for Brown to sign as a pro se litigant. In the certification, Brown stated that respondent "is willing to represent me in this matter and will retain local counsel in New York." Respondent also prepared a letter for Brown to send to NYNEX with the summons and complaint.

In July 1996, respondent notified NYNEX that he would be representing Brown, but he did not file a pro hac vice application with the court until November 7, 1996.

On September 18, 1996, NYNEX filed a motion to dismiss the complaint for failure to file it within three years of Brown's notice of termination - November 17, 1992. Respondent

submitted an opposition to the motion on October 22, 1996.[4] The court, however, dismissed Brown's complaint on February 10, 1997.

Thereafter, Brown retained another attorney to pursue a malpractice claim against respondent. A settlement agreement was signed on January 12, 1998, whereby respondent agreed to refund the $1,500 fee to Brown and to pay damages of $50,000. Respondent never paid Brown, however.

The complaint charges that respondent violated RPC 1.3, RPC 1.4(a) and RPC 8.4 (c) in the Brown matter.

C. Docket No. DRB 00-021 (District Docket Nos. VA-98-059 & VA-98-120)

(1) The Hudson Matter

In 1993, Joyce Hudson's employment with the Department of the Army was terminated. She requested a hearing on the termination and retained an attorney to represent her. Although the administrative law judge reinstated Hudson's employment, the judge's decision was reversed on appeal. Hudson's employment was finally terminated on August 25, 1994. She then filed a complaint pro se in the United States District Court for the District of New Jersey ("District Court"), alleging that she had been discharged because of race, gender and physical handicap. That complaint was dismissed.

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[4] There is an issue as to whether respondent violated RPC 5.5(a) when he filed his opposition, before being admitted in the Southern District. However, the complaint did not allege such a violation.

By letter dated August 13, 1996, the Court of Appeals for the Third Circuit ("Third Circuit") notified Hudson that she had ninety days from August 2, 1996 (the date of the order denying her petition for rehearing) to file a petition for writ of certiorari in the United States Supreme Court.

Apparently, Hudson first met with respondent on October 29, 1996. On that date, respondent wrote to the Rutgers Law School Constitutional Litigation Clinic, requesting that the clinic represent Hudson. In his letter, respondent stated that Hudson could not afford to retain private counsel, that he did not have the time to represent her and that the petition for writ of certiorari had to be filed "on or about November 2, 1996." In fact, the petition had to be filed by October 31, 1996. Although it is not clear from the complaint and exhibits, the clinic apparently decided not to assist Hudson.

Respondent prepared a petition for writ of certiorari for Hudson to file pro se and a motion for leave to file in forma pauperis. Those papers were signed on November 2, 1996 and were received by the Court on November 5, 1996. Because the petition was filed out of time, the Court did not have the "power to review the petition," which was returned to Hudson.[5]

Prior to meeting with respondent, Hudson had also filed an appeal of her employment termination with the Merit System Protection Board. On December 5, 1996, the appeal was dismissed. That initial decision was to become final, unless a petition for review was filed on or before January 9, 1997. On December 30, 1996, respondent filed a petition for review on

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[5] The Court's notice also stated that the petition failed to comply with the content requirement of the federal rules.

behalf of Hudson and signed the petition as attorney for Hudson. When the petition for review was denied, respondent filed a notice of appeal with the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). The appeal was dismissed on September 8, 1997 because respondent "failed to file the brief required by Federal Circuit Rule 31(a) within the time permitted by the rules."

The complaint charges that respondent violated RPC 1.3, RPC 1.4(a), RPC 8.4 (c) and RPC 8.4(d) in the Hudson matter.

(2) The Garcia Matter

According to the complaint, Marco Garcia retained respondent on March 25, 1994 to "handle a wrongful termination claim against the Postal Service." In fact, the Postal Service did not issue a Notice of Proposed Removal until January 31, 1996 and Garcia's employment was not officially terminated until August 31, 1996.

According to the retainer agreement, Garcia retained respondent to represent him in a "civil rights action" against the Postal Service. Respondent charged Garcia $10,000 (of which $9,650 was paid).

On May 22, 1996,[6] respondent filed a complaint on behalf of Garcia in the District Court, alleging discrimination because of a handicap (anxiety disorder) and unlawful retaliation

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[6] Although the reason for the delay in filing the federal complaint is not mentioned in the ethics complaint, the investigative report indicates that respondent had pursued administrative remedies on behalf of Garcia.

because Garcia had filed a complaint with the EEOC. The Postal Service filed a motion for summary judgment on October 31, 1997. Respondent did not file his opposition timely and requested and received two adjournments before finally filing his objection in December 1997. On March 24, 1998, the court granted summary judgment to the Postal Service.

By consent order dated January 29, 1998, respondent was suspended from the practice of law in the District Court for ninety days, effective April 1, 1998. By letter dated March 24, 1998, respondent advised Garcia that he was being "voluntarily suspended" and that Richard Thomas would represent Garcia. On March 26,1998, respondent and Thomas signed a substitution of attorney, which was filed with the court on April 8, 1998. By letter dated March 30, 1998, respondent forwarded to Garcia the court's decision on the summary judgment motion, advised Garcia that he had thirty days to appeal the decision and asked Garcia to contact him.

On April 22, 1998, while respondent was still suspended from practicing in the District Court, he appealed the District Court's summary judgment to the Third Circuit. By letter dated June 30, 1998, respondent forwarded his appearance form and other documents to the Third Circuit. The documents show that both respondent and Thomas represented Garcia on the appeal.

By separate letters dated August 24, 1998, respondent and Thomas advised Garcia that they would no longer represent him because Garcia had filed an ethics grievance against respondent and a request for fee arbitration. Respondent also notified the Third Circuit and his adversary that neither he nor Thomas would be representing Garcia in the appeal.

The complaint charges that respondent violated RPC 1.3 for his failure to timely file an opposition to the summary judgment motion, to timely file an appearance form and other documents with the Third Circuit and "to file a brief by the June 22, 1998 deadline." The complaint also charges that respondent violated RPC 5.5(a) when he "prepared and filed a Notice of Appeal with the United States District Court after he had been suspended from practice before that court."

D. Docket No. DRB 00-024 (District Docket No. VA-98-097)

(1) The Osborne Matter

In 1993, James Osborne filed pro se a complaint against his employer, Montgomery Engineering Company, and six individual defendants, alleging racial discrimination. On January 8, 1994, Osborne retained respondent to represent him in the action and paid him $2,500.

The complaint charges that respondent failed to conduct discovery, failed to reply to the defendants' discovery demands, failed to advise Osborne of the defendants' discovery demands or the discovery deadlines and failed to return Osborne's telephone calls. The complaint further charges that respondent told Osborne that he had a "great case" and promised Osborne that he would take the deposition of all of the defendants. Finally, the complaint charges that respondent only wrote to Osborne twice. The first letter was sent one month after a summary judgment motion had been filed by the defendants, in which respondent told Osborne that the

motion had been filed and asked Osborne if he wanted respondent to continue to represent him. The second letter informed Osborne that summary judgment had been granted and that he had one month to file an appeal.

There are numerous letters from Montgomery's counsel showing that respondent failed to reply to defendants' discovery requests. For example, Osborne's deposition, which had been scheduled for January 11, 1994, was adjourned at respondent's request. Respondent then failed to reply to Montgomery's counsel's requests for a new date. It took several telephone calls and letters over a three-month period, including a letter from Montgomery's counsel to Magistrate Judge G. Donald Haneke, before the deposition was rescheduled.

Also, because of respondent's failure to produce documents, the court issued an order compelling respondent to submit the requested documents to his adversary.

The complaint charges that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.4 (c) in the Osborne matter.

E. Docket No. DRB 00-071 (District Docket Nos. VA-99-025 & VA-99-037)

(1) The Bernadeau Matter

On July 15, 1995, Jean Bernadeau retained respondent to represent him in connection with an injury sustained on June 24, 1994, when he was allegedly assaulted on the job by his

supervisor.[7] Thereafter, respondent communicated with Bernadeau's doctors and his employer's insurance carrier to obtain information and to attempt to settle the claim.

By letter dated December 5, 1995, respondent told Bernadeau that he was going to refer Bernadeau's case to "an attorney more familiar with the workers' compensation laws." By letter dated May 6, 1996, respondent requested that Bernadeau contact him to arrange a meeting with the new attorney. The complaint charges that there was nothing in respondent's file indicating that respondent had done anything on the case after May 6, 1996.

Although Bernadeau attempted to contact respondent on numerous occasions, he was unsuccessful. Respondent never told Bernadeau the name of the new attorney so that Bernadeau could contact the attorney directly. Furthermore, respondent never told Bernadeau that he was suspended from the practice of law in July 1998. When Bernadeau complained to respondent, in early 1998, that almost four years had elapsed since his injury, respondent assured Bernadeau that "they still had one year left." Although the complaint states that Bernadeau concluded his medical treatment in February 1995, it does not state that the statute of limitations had expired.

The complaint charges that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.4 (c) in the Bernadeau matter.

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[7] Although the first paragraph of the complaint refers to Bernadeau as "she," the remaining paragraphs and other documents indicate that Bernadeau is a male.

(2) The Oleka Matter

On January 8, 1997, Terry Oleka retained respondent to file a divorce complaint. Respondent told her that the $160 filing fee had to be paid before he filed the complaint. Oleka paid respondent the $160 fee on January 9, 1998. She also paid him an additional $450 in installments.

Respondent never filed a divorce complaint on behalf of Oleka. On March 10, 1998, Oleka was served with a divorce complaint filed by her husband.

According to the ethics complaint, when Oleka questioned respondent about the status of her case, he misrepresented to her that it was proceeding and, when Oleka brought her husband's divorce complaint to respondent, respondent did nothing to correct Oleka's mistaken belief that her husband's complaint was an attempt to file a "counter-complaint" to Oleka's divorce complaint.

Respondent never filed an answer to the divorce complaint filed by Oleka's husband. The ethics complaint charges that, although respondent promised Oleka that he would take care of her case, he thereafter refused to return her telephone calls, failed to advise her that he had been suspended from the practice of law and, in January 1999, told her that "his associate," Richard Thomas, would assume the handling of her divorce case.

In February 1999, Oleka learned that a default judgment for divorce had been entered against her on May 17, 1998.

The complaint charges that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 8.4(c) and R. 1:20-20(b)(10) in the Oleka matter.

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The various complaints also charge that respondent's gross neglect and lack of diligence in these matters constitute a pattern of neglect, in violation of RPC 1.1(b).

* * *

Service of process was properly made in these matters. Following a de novo review of the record, we find sufficient evidence of unethical conduct. Because of respondent's failure to timely file answers to the ethics complaints, the allegations of the complaints are deemed admitted. R. 1:20-4(f)(1).

In the Mitchell matter, respondent failed to file a complaint for one year and, when he did file it, he did not even take steps to serve it for approximately two months after it had been filed. Although such failures do not automatically constitute lack of diligence, Mitchell had stressed to respondent that it was "imperative" that he file a complaint immediately if the case could not be settled, because of Mitchell's dire financial situation. Under these circumstances, we find that respondent did not act diligently, in violation of RPC 1.3. Also, respondent's failure to reply to Mitchell's "numerous" letters and telephone calls was a violation of RPC

1.4(a) and his failure to provide Mitchell with a writing setting forth the basis or rate of his fee violated RPC 1.5(b).

With regard to the Williamson matter, respondent failed to reply to discovery requests, which ultimately led to the dismissal of his client's case, in violation of RPC 1.3. He also failed to keep his client advised as to the status of her case, in violation of RPC 1.4(a).

In the Brown matter, the facts recited in the complaint support a finding that respondent did not diligently pursue Brown's claim against NYNEX. Although respondent filed the discrimination charge with the EEOC in April 1993, he did not request a "Right to Sue" letter for twenty months, when he should have requested it after six months. The "Right to Sue" letter specifically stated that the complaint had to be filed within ninety days, but the complaint was not filed for almost one year. Therefore, there is sufficient basis for a finding of a violation of RPC 1.3.

According to the ethics complaint in Brown, respondent told his client that her federal court complaint had been filed when, in fact, he had not yet filed it. Furthermore, the complaint that was finally filed indicated that Brown had filed it pro se, but the signature on the complaint was not Brown's. The complaint was dismissed, in September 1996, because it had not been filed within three years of Brown's notice of termination – November 17, 1992. Therefore, the facts alleged in the complaint support violations of RPC 1.4(a) and RPC 8.4(c).

In the Hudson matter, Hudson's appeal to the Federal Circuit from the determination of the Merit System Protection Board was dismissed for respondent's failure to file the required brief. Such failure violated RPC 1.3. With respect to the alleged violation of RPC 8.4(c), there is one statement in the ethics complaint that respondent "misrepresented the status of [Hudson's] case to her," apparently referring to the appeal in the Federal Circuit. Although the factual allegation is scanty, it is deemed admitted and supports a finding of a violation of RPC 8.4(c).

We find, however, that several charges in the complaint are not supported by sufficient facts. For instance, with respect to the late filing of the petition for writ of certiorari, it appears that respondent simply miscalculated the date by which the petition had to be filed. The filing date was only two days after Hudson first met with respondent and, at that time, respondent was apparently attempting to convince the Rutgers law clinic to represent Hudson. Although respondent may have been mistaken about the correct filing date, his miscalculation does not rise to the level of unethical conduct. Therefore, we dismiss the charge that respondent's failure to timely file the petition for writ of certiorari violated RPC 1.3.

Also, the Hudson complaint does not contain any factual allegations that respondent failed to communicate with Hudson. Therefore, we dismissed the charge of a violation of RPC 1.4(a). Although it is unclear, the charge of a violation of RPC 8.4(d) apparently refers to respondent's preparation of the petition for writ of certiorari for Hudson to file pro se . In the

absence of any facts alleging how respondent's actions prejudiced the administration of justice, we also dismiss that charge.

We also determined that all of the charges against respondent in the Garcia matter should be dismissed. With respect to the summary judgment motion, respondent filed his opposition within two months of being served with the motion -- not an inordinate length of time to file an objection to a dispositive motion. Furthermore, it appears that the motion was filed in accordance with the optional motion procedures set forth in the Appendix to the Local Civil Rules for the District of New Jersey. There was no risk that the motion would be heard before respondent filed his papers because, under the optional motion procedure, the moving party must serve its motion papers, receive the opposing party's papers and serve its reply on the opposing party, before the moving party files the motion with the court. Although respondent should have contacted opposing counsel to postpone the service date for filing his opposition, such a lapse does not amount to an ethics violation.

The ethics complaint also charged that respondent did not act with reasonable diligence in the Garcia matter, because he filed his "[a]ppearance [and other documents] with the United States District Court" on June 30, 1998, "fifty-seven (57) days past the due date" and he "failed to file a brief by the June 22, 1998 deadline." Nothing in the record establishes that respondent was required to file the appearance and other documents by May 4, 1998 or that the brief had

to be filed by June 22, 1998[8]. In fact, the OAE investigator determined that, as of May 26, 1999, Garcia was proceeding with the appeal pro se.

Finally, with respect to the charge that respondent filed the notice of appeal after he had been suspended, any violation of RPC 5.5(a) was merely technical. Respondent's appeal of the summary judgment was to the Third Circuit, not the District Court, and there is no evidence that respondent was prohibited from practicing law in the Third Circuit.

The relevant federal rule, FRAP 46, states that when

> it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record... the member will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause... why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

The complaint does not allege that there was even any proceeding instituted against respondent by the Third Circuit. Although the appeal was to the Third Circuit, pursuant to FRAP 4, respondent had to file the notice of appeal in the District Court. In light of the foregoing, we find that any violation of RPC 5.5(a) was merely technical and we dismiss that charge.

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[8] Federal Rule of Appellate Procedure ("FRAP") 12 states that a "representation statement" must be filed within ten days after filing a notice of appeal "unless another time is designated by the court of appeals." FRAP 31 states that the "appellant shall serve and file a brief within 40 days after the date on which the record is filed." The clerk of the District Court transmits the record to the clerk of the Third Circuit. The complaint does not state when the record was filed.

In the Osborne matter, there are sufficient factual allegations to support the charges of violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.4 (c). After assuming responsibility for Osborne's federal discrimination case, respondent failed to conduct discovery, failed to reply to the defendants' discovery demands, failed to advise Osborne of the defendants' discovery demands or the discovery deadlines, failed to return Osborne's telephone calls, told Osborne that he had a "great case" and promised Osborne that he would take the deposition of all of the defendants.

With respect to the Bernadeau matter, respondent initially communicated with Bernadeau's doctors and his employer's insurance carrier to obtain information and to attempt to settle the claim. Respondent thereafter did nothing other than to write a letter to Bernadeau stating that he was going to refer Bernadeau to another attorney who was more familiar with the workers' compensation laws and requested that Bernadeau contact him to arrange a meeting with the new attorney. Although Bernadeau attempted to contact respondent, he was unsuccessful. Therefore, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a).

Although the complaint also charges a violation of RPC 8.4(c), there were no factual allegations relating to that charge. Therefore, we dismiss the charge of a violation of RPC 8.4(c).

Finally, in the Oleka matter, there are sufficient facts to support the charges that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 8.4(c) and R. 1:20-

20(b)(10). Although Oleka paid respondent a total of $610 to file a divorce complaint on her behalf, he never did so. After Oleka was served with a divorce complaint filed by her husband, respondent did not file an answer to the complaint.

Furthermore, respondent misrepresented to Oleka that her divorce action was proceeding and, when Oleka brought her husband's divorce complaint to respondent, respondent did nothing to correct Oleka's mistaken belief that her husband's complaint was an attempt to file a "counter-complaint" to Oleka's divorce complaint.

Respondent also failed to return Oleka's telephone calls and failed to advise her that he had been suspended from the practice of law. In January 1999, respondent told Oleka that "his associate," Richard Thomas, would assume the handling of her divorce case, when, in fact, a default judgment for divorce had already been entered against her on May 17, 1998.

* * *

As explained above, the facts alleged in the Garcia matter do not support the violations charged. However, there are sufficient facts alleged in the remaining matters to prove that respondent violated RPC 1.1(a) (gross neglect) (three counts), RPC 1.3 (lack of diligence) (seven counts), RPC 1.4(a) (failure to communicate with his client) (six counts), RPC 1.5(b) (failure to advise the client in writing of the basis or rate of his fee) (two counts), RPC 8.4(c)

(misrepresentation) (five counts), R. 1:20-20 (b)(10) (failure to advise the client that he has been suspended) (one count) as well as RPC 1.1(b) (pattern of neglect).

In prior matters, we have already recommended that respondent be disbarred. Respondent has been disciplined on three occasions - 1990, 1991 and 1993 - for misconduct in thirteen separate cases. The matters that were remanded by the Court to the special master involve misconduct in fifteen other cases. Respondent's unethical conduct here involves seven different cases.

Respondent's misconduct in all of these disciplinary matters was remarkably similar: he agreed to represent individuals, took their money, then failed to act on their behalf. Often, he misrepresented to his clients that he had filed complaints on their behalf when he had not, or that their cases were proceeding appropriately, when, in fact, their cases had already been dismissed.

Respondent has shown, in thirty-five separate cases, that he is unable - or unwilling - to competently represent clients. Furthermore, respondent has shown that he has little regard for the attorney disciplinary system. He has either completely ignored ethics complaints and allowed defaults to be entered against him or he has attempted to file answers to the complaints after the defaults have already been transmitted to us - despite prior timely notice of the complaints.

In In re Goldstein, 97 N.J. 545 (1985), the attorney, in eleven cases, failed to either perform any work or competently perform work and then misrepresented the status of the actions to his clients. In determining that disbarment was the appropriate sanction, the Court remarked:

> These improprieties standing alone are extremely serious and would require at the least suspension for a lengthy term. But the pattern is disturbing. The incidents demonstrate an unwillingness or inability to cope with the manifest requirements of a competent practice. We have excused such neglect in the case of young or inexperienced practitioners.... But respondent was neither young nor inexperienced. His deficiencies were chronic, persistent, not clearly attributable to identifiable events that overwhelmed his will or comprehension.... '[R]espondent's conduct reflects a lack of awareness of the degree of professionalism expected of every member of the bar.' In re Katz, 90 N.J. 272 (1982).
>
> [In re Goldstein, supra, 97 N.J. at 548].

Because respondent's conduct in these and in prior matters reflect a similar lack of awareness of the degree of professionalism expected of every member of the bar, as the attorney in Goldstein, we unanimously determined to recommend that respondent be disbarred from the practice of law.

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

Dated: 10/26/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Arthur N. Martin, Jr.
Docket Nos. DRB 98-265, 99-391, 00-021, 00-024 and 00-071

Decided: **October 18, 2000**

Disposition: **Disbar**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	X						
Peterson	X						
Boylan						X	
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy	X						
Schwartz	X						
Wissinger	X						
Total:	8					1	

Robyn M. Hill
Chief Counsel