SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-277

IN THE MATTER OF

ALLEN C. MARRA

AN ATTORNEY AT LAW

Decision

Argued: November 16, 2000

Decided: March 26, 2001

Leslie A. Lajewski appeared on behalf of the District VC Ethics Committee.

Respondent appeared *pro se*.

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 VC Ethics Committee ("DEC"). The three complaints charged respondent with the following violations: (1) the *Reddick* matter – *RPC* 1.5(b) (failure to provide a written retainer agreement), *R.* 1:21-6(b)(3) and *RPC* 1.15(d) (failure to comply with recordkeeping

rules) (count one); *RPC* 1.3 (lack of diligence) and *RPC* 1.4(a) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information) (count two); *RPC* 1.1(a) and (b) (gross neglect and pattern of neglect) (count three); and *RPC* 8.4(a) (violating or attempting to violate the *RPC*s) (count four); (2) the *Thomas* matter – *RPC* 1.5(b), *R.* 1:21-6(b)(3) and *RPC* 1.15(d) (count one); *RPC* 1.3 and *RPC* 1.4(a) (count two); *R.* 1:20-20(b)(1) and *RPC* 5.5(a) (practicing law while suspended) (count three); *R.* 1:20-20(b)(11) (failure to notify a client of suspension) (count four); *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count five); *RPC* 1.1(a) and *RPC* 8.4(d) (conduct prejudicial to the administration of justice) (count six); *RPC* 1.5(a) (unreasonable fee) (count seven); *RPC* 1.1(b) (count eight); *RPC* 8.1(b) (failure to cooperate with disciplinary authorities) (count nine); and *RPC* 8.4(a) (count ten); (3) the *Bailey* matter – *RPC* 1.3 and *RPC* 1.4(a) (count one); *RPC* 1.1(a) and (b) (count two); *RPC* 8.1(b) (count three); and *RPC* 8.4(a) (count four).

Respondent was admitted to the New Jersey bar in 1967. He is engaged in the practice of law in Montclair, Essex County. He has an extensive disciplinary history. In 1992 he was privately reprimanded for lack of diligence and failure to communicate with the client. Respondent was publicly reprimanded in 1993 for failure to communicate with the client, directing an office employee to notarize false signatures, failure to deposit settlement proceeds into a trust account and failure to cooperate with ethics authorities. *In re Marra*,

134 *N.J.* 521 (1993). In 1997 respondent was suspended for three months for gross neglect, failure to abide by a client's directions, lack of diligence, failure to communicate with the client, failure to cooperate with ethics authorities and misrepresenting to a client the status of a case. *In re Marra,* 149 *N.J.* 650 (1997). Respondent was restored to practice on October 6, 1998. Recently, in a matter under Docket No. DRB 00-205, we determined to reprimand respondent for practicing law while suspended and for violating the recordkeeping rules.

* * *

The Reddick Matter - Docket No. VC-98-34E

In October 1995 Edna Reddick retained respondent to represent her son, Thorn Turner.[1] Respondent was acquainted with Reddick through her employment with Medical Associates of New Jersey, an Irvington, New Jersey medical practice to which respondent sometimes referred personal injury clients. Turner claimed that he had been accosted and beaten by East Orange police officers. According to the complaint, respondent was retained to file a civil lawsuit on Turner's behalf for violations of his civil rights, harassment, assault and battery.

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[1] Although the presenter issued a subpoena, Reddick did not appear at the ethics hearing due to illness.

On October 26, 1995 respondent met Reddick and Turner at the East Orange Police Department and filed an internal affairs complaint. Reddick paid respondent $250 at that time. Respondent did not prepare a written retainer agreement.

In November 1995 respondent interviewed three witnesses in connection with the assault on Turner. He also sent Turner to Medical Associates of New Jersey and to Irvington M.R.I. for medical examinations.

On December 5, 1995, pursuant to the Tort Claims Act, respondent provided notice of Turner's claims to the City of East Orange. After receiving a February 6, 1996 notice that Berkley Risk Managers ("Berkley") was handling the claim as the city's insurer, respondent sent a notice of claim to Berkley. In March 1996 Turner gave a statement about his claims to the East Orange Internal Affairs Department. For the next eight months, respondent took no action in the matter.

According to the complaint, the following events took place between February 1996 and October 1997:

- From February 1996 through September 1997 respondent failed to return Reddick's telephone calls seeking information about the status of Turner's case.
- On November 6, 1996 respondent requested information about the status of the internal affairs matter. Although he received no reply, respondent failed to pursue his inquiry.
- On June 5, 1997 Berkley asked respondent for Turner's medical records. Respondent failed to produce the requested records.

- On September 2, 1997 Berkley notified respondent that, according to its investigation, the city had no liability in the matter. On September 11, 1997 respondent sent Reddick a copy of the Berkley letter, requesting a meeting with her.

- In early October, respondent met with Reddick, Turner and Furman Templeton, an attorney with whom respondent shared office space. At the meeting, respondent told Reddick and Turner that Templeton would be assuming responsibility for Turner's case. Reddick consented to the transfer of the case to Templeton, who then filed a civil lawsuit in Turner's behalf.

Both in his answer to the complaint and at the ethics hearing, respondent denied that he had been retained to represent Turner in a civil lawsuit. He contended that he had agreed only to file an internal affairs complaint with the East Orange Police Department, for which he had charged Turner $250. Although respondent denied that he represented Turner in the civil lawsuit, he conceded that he filed a notice of tort claim, that he contacted Berkley on Turner's behalf and that, had the lawsuit been successful, he would have received a one-third contingent fee.

Respondent could not recall if he had represented Turner before the East Orange incident. Respondent claimed, however, that, because he had represented Reddick, as well as her granddaughter, her niece, her cousin and her son, Reddick was familiar with his fee and, therefore, he was not required to prepare a written fee agreement. Respondent denied that he had failed to communicate with Reddick, stating that, due to her employment with Medical Associates of New Jersey, he talked to her about two to three times per month .

According to respondent, Templeton assumed representation of Turner upon respondent's suspension in 1997. Respondent claimed that he orally informed Reddick of the suspension. As of the date of the ethics hearing, Templeton continued to represent Turner.

Respondent denied that he had taken no action on the file between March and November 1996. He could not produce any documentation, however, demonstrating that he had performed any services during that time period.

The Thomas Matter - Docket No. VC-98-35E

In July 1995 Betty Lou Thomas retained respondent to represent her in a lawsuit against her former employer, the City of Salem, and several individual defendants, for wrongful termination of employment. Although Thomas gave respondent a $5,000 retainer, he did not prepare a written fee agreement or letter of representation.

On August 1, 1995 respondent filed a lawsuit on Thomas' behalf. On September 12, 1996 an arbitration proceeding took place in the matter. According to the ethics complaint, because respondent did not notify Thomas of the arbitration proceeding, she did not attend it. After the arbitrators determined that Thomas had failed to present sufficient information to sustain the allegations of the complaint, respondent requested a trial *de novo*. The ethics complaint alleged the following violations:

- Respondent failed to notify Thomas of the arbitration determination or of his request for a trial *de novo*.

- Thomas did not hear from respondent until April 1997, when she received discovery. Respondent failed to return Thomas' calls seeking assistance to complete the discovery.

- In September 1997 respondent told Thomas that a motion filed by the City of Salem, based on Thomas' failure to comply with discovery, had been postponed at the city's request. Thomas again unsuccessfully tried to meet with respondent to complete the discovery requests.

- Thomas learned from a friend that, contrary to respondent's representation, the motion had been postponed at respondent's request. Respondent denied this misrepresentation when Thomas confronted him.

- Thomas was not able to contact respondent, who failed to return her telephone calls.

- In January 1998 Thomas received a letter from the city's attorney notifying her that, after a September 12, 1997 hearing, the court had granted the city's motion to dismiss her complaint. The letter further mentioned that, prior to the hearing, respondent had requested an indefinite postponement of the motion and trial because he had been suspended from the practice of law. Until she received that letter, Thomas was unaware that a hearing had been scheduled on the motion, that her complaint had been dismissed and that respondent had been suspended.

- Thomas was not able to contact respondent after receiving the January 1998 letter.

- On February 4, 1998 Thomas received a second letter from the city's attorney, enclosing a copy of an order dismissing her complaint. Again, her efforts to reach respondent were unsuccessful.

- On March 30, 1998 Thomas notified respondent, in writing, that she wanted the return of her files and retainer. Respondent failed to return the files and the retainer to Thomas.

Thomas, who was under subpoena, did not testify at the ethics hearing because of a medical emergency involving her husband. The hearing panel denied the presenter's request for an adjournment.

For his part, respondent contended that he had resolved the matter by returning the file to Thomas, by refunding her $5,000 in two $2,500 installments and by paying all fees in connection with the filing and service of the wrongful termination complaint[2]. Although respondent initially informed the presenter that he could not find his file, he gave it to Thomas when he eventually located it. Notwithstanding that the ethics investigation was in progress at the time, respondent did not retain a copy of the file for himself or for the presenter.

As to the allegations of the complaint, respondent asserted that he had notified Thomas of the arbitration proceeding by leaving a message on her answering machine at her place of employment. He further claimed that, during that proceeding, he again left a message on Thomas' answering machine. He did not recall whether he had propounded discovery or sent a copy of the arbitration determination to Thomas. Although respondent speculated that he must have contacted Thomas before filing the request for a trial *de novo,* he allowed that he may not have informed her about the request.

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[2] Respondent's first installment was returned for insufficient funds. He subsequently cured the shortage and reimbursed Thomas in full.

Respondent denied that he had asked for an adjournment of the motion to dismiss the complaint, adding that, once he was suspended, he could not request a postponement. He claimed that he notified the court of his suspension and of his inability to file papers in the matter. According to respondent, the court replied that Thomas could file a motion to restore the complaint when she retained another attorney. Respondent alleged that Thomas did not wish to pursue the wrongful termination claim. Respondent also denied having told Thomas that the city had requested an adjournment of the motion. On September 4, 1997 respondent wrote the following letter to Thomas:

> It has been some time since we discussed your matter. A notice of motion was served upon me and I believe you received a copy to dismiss the case. Unfortunately, I cannot answer since I have been suspended for 3 months.
>
> Kindly call me to discuss whether you still wish to pursue this matter or perhaps obtain another attorney in light of the arbitration decision. If you choose not to pursue then we can make arragements [sic] for the return of unused monies on the retainer.

The September 4, 1997 letter predated the September 12, 1997 arbitration determination to dismiss the complaint. The presenter suggested that respondent had "created" the September 4, 1997 letter after the beginning of the ethics investigation, pointing out that respondent could not have known, on September 4, 1997, that the arbitrators would determine to dismiss the complaint eight days later. Respondent denied the suggestion, claiming that, based on communications with the court and his adversary, he had

been aware in advance of the September 12, 1997 proceeding that the case was going to be dismissed.

Thomas filed a claim with the New Jersey Lawyers' Fund for Client Protection (CPF), seeking the return of her retainer. On April 13, 1999 respondent sent the following letter to the CPF:

> I am in receipt of the claim of Mrs. Thomas. I have written to Mrs. Thomas and advised her that I will pay her the balance due of the retaining fee less the work I performed, or, in the alternative, file a motion to reinstate the case since it was dismissed without prejudice.
>
> It is my position that the fund is not responsible for any payment since the monies owe [sic] and due Mrs. Thomas will be paid by me and I will endeavor to work it out with her within the next couple of weeks. Unfortunately, I have been disabled since December 1998 due to open heart surgery.

When respondent offered to file a motion to reinstate Thomas' complaint, the statute of limitations had already expired. Respondent contended that he had been aware of the expiration of the statute, but noted that there were "extenuating circumstances." Although respondent could not recall whether he had advised Thomas that the statute of limitations had expired, he contended that Thomas had told him three or four times that she did not wish to proceed with the wrongful termination claim.

Thomas asked for the return of her files and retainer in March 1998. Respondent did not comply with that request until September 1999, attributing the delay to his inability to find the file. Respondent could not recall when he had located the file.

With respect to his fee, respondent claimed that he told Thomas that his hourly rate was $150 and that he would discuss the fee with her "as we went along." He acknowledged that he had not reduced the fee agreement to writing.

Respondent conceded that, after he filed an answer to the ethics complaint, he agreed to send more specific answers at the presenter's request and that he did so only after the presenter sent him another request.

The Bailey Matter - Docket No. VC-98-39E

Nicole Bailey retained respondent on January 15, 1994 to represent her fiancé, James Lowe, in connection with a bail reduction hearing. Bailey was particularly concerned that Lowe, a diabetic, would not be able to obtain insulin while incarcerated. Bailey paid respondent a fee of $500, for which he gave her a receipt, dated January 15, 1994. According to Bailey, during their initial meeting respondent told her that he would find out when and where the bail reduction hearing would take place and proceeded to make several telephone calls. In one of those calls, respondent requested assurances that Lowe was receiving insulin. Bailey contended that, after making those calls, respondent told her to meet him at the courthouse for the bail reduction hearing three days later, on January 18, 1994. Although respondent did not indicate a time or specific courtroom for the hearing, Bailey waited at the courthouse from 9:00 a.m. until 2:00 p.m., but respondent did not

appear. Bailey left numerous messages for respondent, calling him from the courthouse and also later in the afternoon when she returned home. She claimed that, despite the many telephone messages she left for respondent and dozens of letters that she sent him, he failed to contact her. Finally, after about two months, Bailey hired another attorney.

After Bailey filed a request for fee arbitration in 1998, the fee arbitration committee awarded her a refund of the $500 paid to respondent. According to the complaint, respondent failed to refund the fee until threatened with disciplinary action by a July 28, 1998 letter from the Office of Attorney Ethics. On August 4, 1998 respondent sent Bailey a $500 money order.

Respondent admitted that Bailey had retained him to represent Lowe in a bail reduction hearing. He denied, however, telling her that the hearing had been scheduled. Respondent contended that to obtain a bail hearing in Hudson County (where Lowe was incarcerated) he would have to call the bail unit and then receive a return call three to four days later notifying him of a hearing date, typically scheduled for one to two days later. According to respondent, no formal application was necessary. He insisted that it would have been impossible for him to give Bailey a hearing date at their initial meeting. Respondent claimed that he never received a return telephone call from the bail unit. He testified as follows:

Q. Didn't you feel you had an obligation to follow up?

A. It's not a question -- by the question you're asking, I know you don't do any criminal work or do any bail applications. It's not a matter of following up. You don't follow up in these things. It's not the normal course.

[T104][3]

After respondent testified that he had met with Bailey on January 15, 1994, it was brought to his attention that that date was a Saturday. Acknowledging that the bail unit does not conduct business on Saturdays, respondent claimed that the date on the receipt that he had given Bailey was wrong and that he could not have met with her on January 15, 1994. Parenthetically, respondent admitted that, in January 1994, he did not maintain an attorney business account.

Respondent denied having received any telephone messages or letters from Bailey, claiming that, after not hearing from her for four years, he received a copy of her request for fee arbitration. He contended that he did not recognize her name and had no file for her or Lowe. Respondent stated that, instead of opening a separate file for Lowe, respondent simply maintained one large file of pending bail hearings.

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3 T refers to the April 10, 2000 hearing before the DEC.

Respondent failed to reply to the ethics grievance, apparently relying on his answer to the fee arbitration request, despite the fact that the presenter had notified him that they were separate proceedings and that she did not have his answer to the fee arbitration request. Again, the presenter made several requests for a more specific answer before respondent finally complied. Respondent's testimony on this issue was evasive:

A. Also, there's another answer that I filed with regard to the arbitration matter that you have.

Q. I don't believe I have that.

A. Well, you should have it, because that was filed.

Q. But you did not send me that, correct.

A. I assumed you had it. I didn't have it.

Q. In fact, you never mentioned to me during all of this investigation that you were involved in a fee arbitration with Miss Bailey, correct.

A. I thought you knew.

Q. But you never mentioned it to me?

A. I thought it was obvious.

[T93]

* * *

The DEC found in *Reddick* that respondent violated *RPC* 1.5(b) by failing to prepare a written fee agreement and *RPC* 1.15(d) by failing to comply with *R.* 1:21-6(b)(3), requiring attorneys to maintain for seven years any records in connection with retainer and compensation agreements. The DEC did not find a violation of *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.1(a) or (b) or *RPC* 8.4(a).

With respect to *Thomas*, the DEC found violations of all fifteen *RPC*s cited in the complaint. The DEC expressed its concern that, despite respondent's receipt of a $5,000 retainer, he failed to maintain time records or to send a bill to Thomas and appeared uncertain about the amount of his hourly rate.

In the *Bailey* matter, the DEC found that respondent violated the six *RPC*s mentioned in the complaint. The DEC voiced its concern over (1) respondent's failure to maintain an attorney business account; (2) respondent's misrepresentation that he had contacted the court, when he could not have because January 15, 1994 was a Saturday;[4] (3) respondent's admission that he did not open separate files but, instead, maintained a master file on bail reduction hearings and never referred to that file unless a client contacted him.

The DEC recommended that respondent be reprimanded, practice law under the guidance of a proctor for at least six months, complete courses in professional ethics and

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[4] The DEC concluded that respondent "simply took Ms. Bailey's money, allowed her to believe a date had been scheduled for a bail hearing, and did nothing further;" although the DEC characterized this behavior as a misrepresentation, it did not find a violation of *RPC* 8.4(c).

attorney trust and business accounting and take the professional responsibility exam required of bar admission candidates.

* * *

Following a *de novo* review of the record, we are satisfied that the DEC's findings that respondent's conduct was unethical are supported by clear and convincing evidence. We determined, however, to dismiss the violations charged in the *Reddick* matter. Due to Reddick's absence, the presenter was unable to prove the violations by clear and convincing evidence. Although the complaint alleged that respondent exhibited gross neglect, pattern of neglect and lack of diligence, failed to communicate with the client and violated or attempted to violate the *RPC*s, there was no evidence or admission of those violations. Moreover, in light of respondent's filing of a timely notice of tort claim and transfer of the file to another attorney, who timely filed a civil complaint, it would be inappropriate to sustain the charges of gross neglect, pattern of neglect and lack of diligence.

Respondent conceded that he had failed to prepare a written fee agreement. However, in light of his prior representation of at least five members of Reddick's family, we determined that Reddick had to be aware of respondent's basis for his fee, and, therefore, dismissed the charges of violations of *RPC* 1.5(b) and *RPC* 1.15(d).

In *Thomas*, respondent was retained to represent Betty Lou Thomas in a wrongful termination lawsuit against the City of Salem and other defendants. As in *Reddick*, the grievant did not testify. As noted earlier, both Reddick and Thomas had been issued subpoenas, but failed to appear for medical reasons. The complaint alleged that respondent (1) failed to notify Thomas of the arbitration hearing, of the arbitration determination and of his request for a trial *de novo*, (2) failed to return Thomas' calls asking for assistance with the completion of discovery requests, (3) misrepresented to Thomas that the city had asked for a postponement of a hearing on its motion to dismiss the complaint, (4) failed to return Thomas' telephone calls, and (5) failed to notify Thomas that he had been suspended, that a hearing had been scheduled on the motion to dismiss and that the complaint had been dismissed.

Respondent denied the majority of the above allegations. The presenter, in turn, did not offer evidence to rebut respondent's denials. Accordingly, we determined to dismiss the following charges:

- *RPC* 1.15(d) - failure to maintain records of retainer agreements. Obviously, respondent could not have maintained a record of a retainer agreement if he did not prepare a retainer agreement.

- *R.* 1:20-20(b)(1) and *RPC* 5.5(a) - practicing law while suspended. Although the complaint alleged that, "upon information and belief," respondent answered discovery in Thomas' behalf while he was suspended, no proofs were offered at the ethics hearing to support that contention.

- *RPC* 8.4(c) - conduct involving dishonesty, fraud, deceit or misrepresentation. The complaint asserted that respondent misrepresented to Thomas that the City of Salem had requested a postponement of the September 1997 hearing on the motion to dismiss the complaint and that, when Thomas questioned him about this, he repeated the misrepresentation. Respondent denied having made those misrepresentations and no rebuttal evidence was offered.

- *RPC* 1.1(a) and (b) - gross neglect and pattern of neglect. Although the complaint alleged that respondent failed to diligently prosecute Thomas' case and allowed the statute of limitations to expire, respondent testified that, at some point, Thomas informed him that she no longer wished to pursue the litigation.

- *RPC* 8.4(d) - conduct prejudicial to the administration of justice. This charge was based on the allegation that "respondent has engaged in conduct that was prejudicial to Thomas' case and, therefore, prejudicial to the administration of justice." To sustain a violation of *RPC* 8.4(d), however, there must be clear and convincing evidence that respondent's conduct was harmful to the court, the bar or the public – in other words, that the system of justice was implicated. There was no such showing here.

- *RPC* 1.5(a) - reasonable fee. According to the complaint, respondent charged an unreasonable fee by accepting a retainer of $5,000 or $7,000 (the evidence showed it was $5,000) for representing Thomas, when there did not appear to be any novel or difficult questions and when he failed to keep time records. At the time of the initial representation, July 1995, respondent undertook to file a lawsuit for wrongful termination against the City of Salem and eight individuals. He could not have foreseen that, because he would be suspended two years later, he would not have had the opportunity to complete the litigation. Although respondent should have kept time records because he was charging an hourly fee, it cannot be said that, when he accepted the retainer, he knew that the fee was unreasonably high. Respondent eventually returned the fee to Thomas, albeit only after she filed a claim with the CPF.

- *RPC* 8.1(b) - failure to cooperate with disciplinary authorities. Although respondent did not promptly reply to the investigator's request for a more specific answer to the complaint, requiring her to send an additional request, he eventually filed a more specific answer.

- *RPC* 8.4(a) - violate or attempt to violate the *RPC*s. This charge was dismissed as redundant.

The remaining charges were proven by clear and convincing evidence. Respondent conceded that he failed to prepare a written fee agreement, in violation of *RPC* 1.5(b). Also, his failure to notify Thomas until September that he had been suspended in July and his failure to suggest that she retain another attorney violated *RPC* 1.3, *RPC* 1.4(a) and *R.* 1:20-20(b)(1).

We are mindful that, during the investigation of the *Thomas* matter, respondent informed the investigator that he could not locate his file. Yet, after he found the file, despite his knowledge of the investigation, respondent turned the file over to his client without retaining copies or providing a copy to the investigator. We found respondent's conduct in this regard troubling and caution him that similar future misconduct may support a charge of failure to cooperate with ethics authorities.

In *Bailey*, respondent was retained to represent James Lowe, Bailey's fiancé, in a bail reduction hearing. Bailey paid respondent $500 and understood that she was to meet respondent at the courthouse three days later for the hearing. Respondent failed to appear in court. In addition, Bailey's subsequent attempts to contact him were not successful. Bailey was forced to retain another attorney, which she did two months later. Respondent ultimately refunded her $500, after he was ordered to do so by a fee arbitration committee. According to respondent, however, Bailey misunderstood him. He testified that his practice was to call

the bail unit and wait for a return call several days later, notifying him of the hearing date. Respondent claimed that, although the bail unit never contacted him, he had no obligation to follow up and determine the cause of the delay. According to respondent, when he testified that he met with Bailey on January 15, 1994, a date that turned out to be a Saturday, he had been mistaken about the date, although the receipt that he had given Bailey was dated January 15, 1994. Respondent denied that he had failed to contact Bailey, asserting that he did not hear from her for four years before he received her request for fee arbitration.

We find that respondent's failure to contact the bail unit in Lowe's behalf constituted lack of diligence, in violation of *RPC* 1.3 and that his failure to return Bailey's telephone calls violated *RPC* 1.4(a). On the other hand, we find that, although respondent should have made efforts to obtain a hearing date of Lowe's bail reduction request, his failure to do so over a two-month period did not rise to the level of gross neglect. We, therefore, dismissed the charges of a violation of *RPC* 1.1(a) and (b). In addition, because respondent filed an answer to the complaint, albeit an untimely one, we dismissed the charge that respondent failed to cooperate with ethics authorities. Finally, we dismissed the charge of a violation of *RPC* 8.4(a) as duplicative.

One additional point warrants mention. Respondent testified that, when he returned the $500 to Bailey, he did not maintain an attorney business account. He, thus, admitted a violation of *RPC* 1.15(d), which requires attorneys to comply with the provisions of *R.* 1:21-

6. That rule, in turn, requires attorneys to maintain business accounts. Although respondent was not specifically charged with a violation of *RPC* 1.15(d), the record developed below contains clear and convincing evidence of a violation of that *RPC*. Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. *R.* 4:9-2; *In re Logan*, 70 *N.J.* 222, 232 (1976).

In summary, in *Thomas*, respondent displayed lack of diligence, failed to communicate with the client, failed to promptly notify the client of his suspension and failed to prepare a written fee agreement; in *Bailey*, respondent exhibited lack of diligence, failed to communicate with the client, and failed to maintain a business account.

Respondent's ethics history is a significant aggravating factor. Moreover, he has generally shown disrespect to the disciplinary system, at times even testifying in a flippant manner. In mitigation, we considered that respondent underwent heart surgery in December 1998.

Ordinarily, similar misconduct, without prior discipline, results in a reprimand. *See In re Hamilton*, 147 *N.J.* 459 (1997) (reprimand for lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities) and *In re Gruber*, 152 *N.J.* 451 (1998) (reprimand for gross neglect, lack of diligence, failure to communicate with a client and failure to cooperate with the Office of Attorney Ethics' request for information

in the matter). Prior discipline is considered as an aggravating factor requiring more severe discipline. *See, e.g., In re Page*, 162 *N.J.* 107 (1999) (attorney suspended for six months for gross neglect, lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities; attorney had previously been admonished, reprimanded and suspended for three months for similar violations); *In re Bernstein*, 144 *N.J.* 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate, misrepresentation and failure to cooperate with disciplinary authorities; attorney had previously received a private reprimand); *In re Ortopan*, 147 *N.J.* 330 (1997) (six-month suspension for lack of diligence, failure to communicate, failure to deliver a file and failure to cooperate with disciplinary authorities; attorney had previously been suspended for three months for the same type of violations); and *In re Balsam*, 142 *N.J.* 550 (1995) (six-month suspension where the attorney, who had previously been privately reprimanded twice, grossly neglected a matter, failed to communicate with a client and failed to cooperate with disciplinary authorities).

This respondent has previously received a private reprimand, a public reprimand and a three-month suspension. Also, we recently determined to impose a reprimand in a pending matter. Based on respondent's extensive disciplinary history and his cavalier attitude toward the disciplinary system, we unanimously determined to impose a three-month suspension. We also required respondent, within six months of his reinstatement, to complete six hours

of ethics and trust accounting courses and to submit to the Office of Attorney Ethics proof of successful completion of those courses. We further required respondent, on reinstatement, to practice law under the supervision of a proctor for a period of two years.

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

Dated: 3/26/01

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Allen Marra
Docket No. DRB 00-277

Argued: November 16, 2000

Decided: March 26, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month 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:		9					

Robyn M. Hill 7/10/01
Robyn M. Hill
Chief Counsel