SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-007

IN THE MATTER OF

JOHN de LAURENTIS

AN ATTORNEY AT LAW

Decision

Argued: March 14, 2002

Decided: April 12, 2002

Nancy D. Gold appeared on behalf of the District IV 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 IV Ethics Committee ("DEC"). The eight-count complaint charged respondent with violations of *RPC* 1.3 (lack of diligence), *RPC* 1.5(c) (failure to prepare a written fee agreement), *RPC* 1.7(a)(1) and (2) and *RPC* 1.7(b)(1) and (2) (conflict of interest), *RPC* 8.4(a) (violate or attempt to violate the *Rules of Professional Conduct*, knowingly assist or induce another to do so, or do so through the acts of another) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count one); *RPC* 1.3, *RPC* 1.7(a)(1) and (2), *RPC* 1.7(b)(1) and (2), *RPC* 1.8(e) (providing financial assistance to a client), *RPC* 8.4(a) and *RPC* 8.4(c) (count two); *RPC* 1.3 and *RPC* 1.8(e) (count three); *RPC* 1.8(e), *RPC* 8.4(a) and *RPC* 8.4(c) (count four); *RPC* 1.3 and *RPC* 1.15(b) (failure to promptly deliver funds of a third party) (count five); *RPC* 1.8(e) and *RPC* 8.4(c) (count six); *RPC* 1.15(d) (failure to comply with recordkeeping rules) (count seven); and *RPC* 1.1(b) (pattern of neglect) (count eight).

Respondent was admitted to the New Jersey bar in 1980. On January 9, 2002 we filed with the Court our decision reprimanding him for gross neglect, lack of diligence and failure to communicate in three matters, failure to expedite litigation in two of those matters, pattern of neglect, practicing law while ineligible and failure to cooperate with ethics authorities. The decision cautioned respondent that future ethics infractions would be met with harsher discipline. That matter is pending with the Court.

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Respondent admitted many of the allegations of the complaint. The remaining facts were adduced from the testimony of the Office of Attorney Ethics' ("OAE") investigator and respondent.

The Watkins Matter – Count One

Respondent represented five passengers in a car involved in an accident on May 20, 1992. Portia Watkins was the driver. The five passengers were Watkins' three minor children, as well as Laurice and Korren Holmes. The driver of the other vehicle, Donna Carter, filed a lawsuit against Watkins.

On May 20, 1994, the date on which the statute of limitations was to expire, respondent filed a personal injury lawsuit, on behalf of his five clients, against both Watkins and Carter. On that same date, respondent sent a letter to defense counsel for Watkins, requesting an immediate settlement of all claims:

> The statute of limitations runs today. I did everything possible to settle the cases of my claimants in August of 1993. Now I am told I must file the lawsuit, and for reasons I do not intend to get into, all my diligence on behalf of my clients will come to nothing if the lawsuit is filed.

Respondent was referring to the fact that, because Korren Holmes was a welfare recipient, the Camden County Board of Social Services ("CCBSS") had an interest in the personal injury claim.

On September 26, 1994 CCBSS formally notified respondent that (1) it had an interest in the matter; (2) Korren Holmes had signed an agreement to repay the agency, as a condition of receiving welfare benefits; and (3) under *N.J.S.A.* 44:10-4(a), an attorney may be held liable for the amount of any direct payment made to a client after notice of the agency's interest in the claim. Any recovery by Korren Holmes was, thus, required to be paid to CCBSS, under the agreement to repay.

In a June 23, 1995 letter, respondent informed Korren Holmes of the notice from CCBSS:

> As you remember in this case, I tried from August 1993 until August 1994 for one year, to settle the case, but the insurance company would not return my phone calls, discuss it with me, or respond to my letters. We had no other choice but to file a law suit in August 1994,[1] and as I discussed with you at that time, this is how Welfare finds out about cases. And, in fact, I received a letter from Welfare, and I believe the lien is somewhere in the area of $10,000.00. . . The other cases cannot be settled unless your case is settled also, so all cases have to be settled at the same time.

Also on June 23, 1995 respondent wrote to Marcia Boyd, Watkins' mother and the grandmother and guardian *ad litem* of the three Watkins children:

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1 As mentioned above, respondent filed the lawsuit on May 20, 1994.

> The main problem is Korren's case in which there is a Welfare lien, and in which I tried to settle the case for two years but could never get anybody from the insurance company to discuss it with me. I had to file a law suit by the two year deadline after the accident and that is how Welfare finds out about cases. Welfare has a $10,000.00 lien and they will take all of Korren's money, except for $500.00 if we settle for the $14,000.00 they want to give her. . . The check which will come in would be payable to you and the children, and what you want to do as far as between the children, yourself, and Portia, is up to you. This money is supposed to be held until the children are 18, but no one from the Courts do [sic] any follow up or checking to find out what people do with the money for their kid's cases under $5,000.00.

At some point, Carter, who also had sued Portia, settled with Portia's insurance carrier. Respondent's clients did not participate in that settlement. When the attorney for the insurance carrier contacted the court to determine the status of the matter, he was told that the court records indicated that the matter was resolved at a June 20, 1995 settlement conference. Apparently, the matter was then dismissed.

On August 28, 1996 the carrier's counsel notified respondent that, according to the court records, the case had been resolved. He also enclosed a copy of a court order directing the deposit of the $19,000 balance of the policy limits into the Superior Court trust account until the expiration of the eighteen-month deferment period applicable to all payments made by the Market Transition Fund ("MTF"). The carrier's counsel asked about respondent's intentions regarding the claim.

On December 19, 1996 he reminded respondent that the $19,000 remained in the Superior Court trust account and could be distributed if an agreement on the

disbursement among respondent's clients could be reached. In a reply letter dated January 24, 1997, respondent acknowledged that long ago he should have filed a motion to reinstate the case and entered a default against the other driver, Carter. Respondent, however, took no further action in the matter.

According to the OAE investigator, respondent's file on *Watkins* did not contain the following:

- A written fee agreement.
- Evidence that the litigation was concluded, either by settlement or judgment, or that respondent tried to resolve the claim.
- An indication that respondent tried to reach a compromise with CCBSS over the amount of its interest in Korren Holmes' personal injury claim.
- Evidence that respondent advised Laurice Holmes or the minor children's guardian ad litem of the conflict of interest arising from his simultaneous representation of their interests and those of Korren Holmes, or that respondent advised Laurice Holmes, Korren Holmes or Boyd to either seek other counsel or to waive the conflict.

For his part, respondent contended that, although he had entered into a written fee agreement with his clients, it had been lost. According to respondent, the $19,000 deposited by the insurance company remains in the court's trust account. In his answer to the ethics complaint, respondent admitted the following:

- He received notice of a welfare lien in September 1994, which entitled CCBSS to the share of the personal injury recovery of a plaintiff/welfare recipient.

- He wrote letters to Korren Holmes and to Marcia Boyd explaining the mechanism of welfare liens.

- He did not try to compromise Korren Holmes' welfare lien because such liens are not subject to compromise.

- He did not advise his clients of a conflict of interest because there was no conflict of interest.

- He mentioned in a letter to insurance counsel that, sometime ago, he should have reinstated the complaint and obtained a default judgment against the other driver, Donna Carter.

The DEC found that respondent was guilty of lack of diligence, failure to prepare a written fee agreement, conflict of interest, under *RPC* 1.7(b), and conduct involving dishonesty, fraud, deceit or misrepresentation. The DEC did not find a violation of *RPC* 1.7(a) or *RPC* 8.4(a).

The Gonzalez Matter – Count Two

Respondent represented the driver and two passengers in a personal injury matter arising out of a March 21, 1994 automobile accident. Respondent's clients were the driver of one of the vehicles, Alberto Gonzales, and his two passengers, Adelina Vicente and her minor daughter, Jessica Mercado. Respondent was aware that Vicente received assistance from CCBSS on behalf of Mercado. On April 1, 1994 respondent sent the following letter to Gonzalez:

> I recently got a phone call expressing concern about a matter which I would be most happy to discuss with you in person. Most of my clients never lose one penny to welfare or anyone else.
>
> Welfare only finds out about peoples' accidents when I file a law suit. I settle my cases out of court by telephone without filing a law suit. Please contact me if you have any questions.

In a February 3, 1995 letter, respondent notified Gonzalez and Vicente that the insurance company of the other driver "will accept your bodily injury claim without me having to file anything in Court." Respondent settled the personal injury claims in April 1996, more than one year later.

On May 16, 1996 respondent sent both a letter and a settlement statement to Gonzalez. Although the letter mentioned a $200 deduction from Gonzalez' settlement to repay a loan to respondent, the settlement statement contained no such reference. Gonzalez had signed a promissory note in respondent's favor, documenting the $200 loan.[2] Respondent's May 16, 1996 letter to Gonzalez stated that he had advanced the funds to her, while awaiting the settlement check.

Respondent failed to notify his clients of the conflict of interest arising from the representation of both the driver and passengers in an automobile accident or to advise them to seek other counsel.

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[2] The note is dated September 22, but the year is illegible.

Respondent's answer contained the following contentions. Respondent admitted that he represented the driver and both passengers, denying that a conflict of interest existed. He stated that he had not advised his clients of a potential conflict of interest because he did not believe that there was any. Respondent denied knowledge that any of his clients had active assistance cases at the time of the accident. He admitted writing to Gonzalez, however, informing him that welfare agencies assert liens upon the filing of personal injury lawsuits. As to the $200 loan, respondent admitted that he had advanced $200 to Gonzalez, but only after the claim had been settled.

The DEC concluded that respondent engaged in a conflict of interest, in violation of *RPC* 1.7(b), provided financial assistance to a client, violated or attempted to violate the *RPC*s, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. No violation of *RPC* 1.3 or *RPC* 1.7(a) was found.

The Santiago Matter – Count Three

On February 18, 1993 Maria Santiago retained respondent to represent her after a February 13, 1993 accident in which, as a pedestrian, she was hit by a motor vehicle. From July 1994 through May 1995 respondent lent $470 to Santiago in a series of seventeen small loans, all of which were documented by promissory notes.

Respondent apparently "lost track" of Santiago, after she relocated to Philadelphia. Respondent's file contained no indication that he tried to locate Santiago, pursue her claim or terminate the representation.

MEMORANDUM

In his answer to the ethics complaint, respondent admitted that he represented Santiago, that he loaned her $470 and that he never resolved Santiago's claim because she did not stay in touch with him.

The DEC found that respondent provided financial assistance to a client, in violation of *RPC* 1.8(e). The DEC found no clear and convincing evidence of lack of diligence.

The Hernandez Matter – Count Four

On October 19, 1992 Carlos Hernandez retained respondent to represent him in a personal injury claim against his insurance carrier, MTF, arising from an October 15, 1992 motor vehicle accident. On an undisclosed date, Hernandez passed away. Respondent failed to reveal Hernandez' death to MTF.

On August 29, 1995 respondent sent the following letter to Carmen Troche, Hernandez' widow:

I am trying to settle Carlos' case without telling the insurance company he has passed away. They will only offer you $5,000.00. The problem is that after the $1,200.00 deductible co-payment, and after the money he owes me, there will be nothing left. I am trying to settle for more money.

MEMORANDUM

MTF learned of Hernandez' death upon receiving documents signed by Troche after the case was settled. Among those documents was a power-of-attorney in respondent's favor, signed by Troche and notarized by Michelle Bennie, respondent's former secretary. On September 24, 1999 a letter was sent to Bennie under respondent's signature, enclosing the signed power-of-attorney and asking her to notarize it and return it. Troche signed the document on September 23, 1999. Bennie notarized the power-of-attorney, despite the fact that Troche had neither appeared before her nor signed the document in her presence. Although the letter to Bennie was not sent until September 24, 1999, the *jurat* was dated September 23, 1999, the same date as Troche's signature. The date of the *jurat* appeared to have been altered.

On October 14, 1999 respondent sent the power-of-attorney to the insurance carrier.

Respondent settled the claim for $7,350. In a November 18, 1999 letter to Troche, respondent stated that, because he had "advanced $610.00 while we were waiting for the payment on the check," a $3,435.03 check was enclosed. Respondent's settlement

statement of the same date, which contained no reference to the $610 loan, indicated that a $4,045.03 check was enclosed.

Respondent's answer to the formal ethics complaint asserted that Hernandez had passed away in July 1995. Respondent acknowledged that he tried to resolve the claim without disclosing Hernandez' death to MTF and that the carrier learned of the death upon receiving paperwork resolving the claim.

Respondent testified as follows:

> As to the concealment of the death of Hernandez, to make it clear, this was a[n uninsured motorist] case. It was never in litigation. It was settled with the MTF without telling them that he had passed away. I would estimate that the time that elapsed until the settlement from the time he passed away, it was probably less than a year, maybe nine months. But, in any case, that might not necessarily be the end of the discussion. When a carrier settles a case, or thinks he settles a case, and gets a release, and the release is not signed by the person but signed by someone else to make it clear that someone has passed away, is the carrier bound by that release? . . . In this particular case, the carrier noted that the person had passed away, mentioned it to me, but did not seek to nullify the settlement. I guess what I'm saying is, I haven't read the Forrest case or its predecessors, but it might be a circular problem. As long as there is no overt deception or misrepresentation and you simply wind up settling the case without giving them affirmative information, and if that is, in fact, improper in the Forrest case, then it doesn't amount to any ill harm being effected on any adverse party, because if it is improper, then it should be a basis to get out of the settlement. Of course, the real basis why I find it almost impossible to believe that you have to disclose that your client dies is because you would completely destroy your case . . . The big problem with the client passing away, if the client has passed away without giving any oral statement in the

case, which can preserve his testimony at the time of trial, then he is not able to present his case and the case has a zero value.
[T240-242][3]

According to respondent, he had suggested that Troche sign a power-of-attorney because she had been experiencing mental problems and had refused to execute the settlement check. After the check expired, the carrier issued a replacement. After issuing four checks that were not signed, MTF required respondent to guarantee that she would sign the fifth check. Respondent, thus, decided to draft a power-of-attorney to permit him to sign the check. Respondent testified that, when Troche went to his office to sign the power-of-attorney, she signed the check. Respondent did not explain why, after Troche signed the settlement check, he nevertheless obtained her signature on the power-of-attorney and sent it to the carrier.

Respondent asserted that, because his then-secretary was not a notary, he had sent the power-of-attorney to his former secretary to be notarized. Respondent stated that, although he could have signed the *jurat* himself, he thought that the insurance carrier would prefer the signature of a notary. Respondent denied having altered the date on the power-of-attorney or knowing who had done so, acknowledging, nevertheless, that he is

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3 T refers to the transcript of the August 23, 2001 DEC hearing.

ultimately responsible for documents sent by his office. He contended that, if he had seen the altered date on the power-of-attorney, he would not have sent it.

The DEC found that respondent provided financial assistance to a client, violated or attempted to violate the *RPC*s and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Murphy Matter – Count Five

On January 9, 1991, Cheryl Murphy retained respondent to represent her after her car was struck from the rear by another vehicle. In a July 23,1992 letter, CCBSS notified respondent that, because Murphy was receiving public assistance, the agency had an interest in Murphy's personal injury claim. CCBSS enclosed a copy of an agreement signed by Murphy as a condition of continued eligibility for welfare benefits. The letter further stated as follows:

> Additionally, please be advised that under N.J.S.A. 44:10-4(a), the legal representative of a welfare recipient may not, subsequent to this notice of the Camden County Board of Social Services' interest in the settlement proceeds, make any direct payment to his or her client. Such disbursement, without the prior express written approval from the Camden County Board of Social Services, may result in your direct liability to this Agency for the full amount of the monies paid directly to your client.

Thereafter, in a series of seven letters sent periodically between August 27, 1992 and April 16, 1997, CCBSS reminded respondent of its interest in Murphy's personal

injury claim and asked him to keep it informed of the status of the matter. In a November 6, 1998 letter, CCBSS confirmed its understanding that the case had been settled and requested the disbursement of the settlement proceeds. In an April 29, 1999 letter, CCBSS informed respondent that the amount of its lien was $9,247 and again requested the disbursement of the settlement proceeds.

Unbeknownst to CCBSS, four years earlier, on March 2, 1995, respondent had settled Murphy's case for $10,000. At the request of the insurance carrier, Murphy's release held the other driver and the carrier harmless from all liens, including those of the welfare agency. On April 12, 1995 the insurance carrier sent a $10,000 settlement check to respondent. From April 21 through June 15, 1995 respondent sent three letters to Murphy, requesting that she visit his office to endorse the insurance check. According to respondent, after Murphy signed the check in early 1996, he deposited it into his trust account.

On July 6, 1999 CCBSS filed a lawsuit against respondent and Murphy, requesting $9,247 plus costs for the failure to satisfy the agency's lien. Although respondent filed an answer in his own behalf, he failed to reply to the agency's discovery requests. Judgment was entered against him on October 26, 1999. As of the ethics hearing, the judgment remained unsatisfied.

Respondent claimed that, because he had performed legal services for Murphy that pre-dated his knowledge of CCBSS's lien, he had a prior lien on a portion of Murphy's settlement share. In an April 15, 1996 letter, CCBSS allowed respondent to disburse his legal fee before distributing the agency's share.

At the time of the ethics hearing, respondent still had not billed Murphy for the earlier legal services. Respondent acknowledged that the welfare agency had been "more than fair" and that he would "write a check one of these days as soon as possible" to disburse its share of Murphy's claim. After the payment of respondent's legal fees and CCBSS's lien, Murphy will not receive a distribution from the settlement.

* * *

The DEC found that respondent failed to act with diligence and failed to promptly deliver funds to a third party.

Loans to Clients – Count Six

After its review of respondent's trust account records, the OAE investigator determined that respondent had made at least twenty-eight separate loans to clients, including to Gonzalez and Troche. The loans were repaid from the clients' settlement

proceeds. In cases in which respondent had lent money to clients, he issued two checks, one for the amount of the loan and the other for the balance due the client. The client then endorsed the loan check to respondent. Frequently, the memo column of the loan check contained the words "loan payback." The presenter introduced into evidence twenty-six checks that clients endorsed back to respondent. Respondent stated that the bank would not cash the checks issued to his clients without his signature. The clients' endorsements on those checks were preceded by the language: "pay to the order of John de Laurentis."

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The DEC found that, by advancing funds to numerous clients, respondent violated *RPC* 1.8(e) and *RPC* 8.4(c).

Recordkeeping Violations – Count Seven

The complaint alleged the following recordkeeping improprieties:

- respondent was unable to produce trust account bank statements or canceled checks for the following periods: January and February 1998, April 1998, June 1998, February 1999, April 1999 through September 1999 and February 2000;

- respondent was unable to produce fifty-eight deposit tickets, as shown by the available bank statements, plus other deposit tickets from months in which the bank statements were not available;

- respondent was unable to produce thirty ledger cards for clients identified through bank records;

- respondent's records from February 1999 through July 2000 revealed missing checks, missing deposit tickets and unidentified or illegible items;

- respondent's client ledger cards contained open balances, both positive and negative. Only four out of eighty-eight client ledger cards contained a zero balance.

The presenter introduced into evidence documents reconstructed by the OAE, indicating that respondent (1) failed to maintain checks and deposit slips, as required by the recordkeeping rules; (2) maintained numerous unidentified items; and (3) maintained client ledger cards with positive and negative balances.

Although respondent admitted some of the recordkeeping violations, he denied that (1) he should have produced fifty-eight deposit slips; (2) thirty ledger cards were missing, although he conceded that some were not produced "through some oversight from my office;" (3) there were unidentified or illegible items; and (4) only four out of eighty-eight client ledger cards contained a zero balance. Respondent acknowledged that there were numerous open balances. However, he denied any awareness of the negative balances and claimed that the open positive balances resulted from disputes with insurance carriers and medical providers in personal injury protection cases.

The DEC concluded that respondent failed to maintain required records, in violation of *RPC* 1.15(d).

Pattern of Neglect – Count Eight

The complaint alleged that respondent's conduct in the *Watkins, Gonzalez, Santiago, Hernandez* and *Murphy* matters constituted a pattern of neglect. Respondent denied this charge.

The DEC determined that respondent engaged in a pattern of neglect, in violation of *RPC* 1.1(b).

The DEC recommended that respondent be suspended for three months, that he be required to take business and trust account recordkeeping classes, that his trust account be frozen while the OAE reconstructs his records and that CCBSS and clients whose funds have been deposited in court be notified so that they may seek the turnover of those monies.

* * *

Following a *de novo* review, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

In *Watkins*, respondent engaged in a conflict-of-interest situation by representing Korren Holmes, a welfare recipient, as well as the other four clients whose interests, while not adverse, were different. Because respondent did not want the welfare agency to

learn of Holmes' personal injury claim, he did not file the lawsuit until the last day before the expiration of the statute of limitations. His other clients, however, had no reason to delay the filing of the lawsuit. Upon the insurance carrier's refusal to communicate with respondent, he was obligated to take prompt action to advance his clients' interests. Because respondent wanted to conceal Holmes' personal injury claim from the welfare agency, he delayed filing the lawsuit until the last possible day, to the detriment of his other clients. Respondent did not advise his clients of this conflict or obtain their consent to the multiple representation. At oral argument before us, respondent conceded that there may be an apparent conflict in representing multiple claimants when, as here, the insurance proceeds are insufficient to fund the claims of all plaintiffs. He contended, however, that no actual conflict existed because the result would be the same, whether the claimants were represented by one attorney or several attorneys. Without addressing the merits of that contention, we noted that respondent's argument ignores the fact that, although it may have been to Korren Holmes' benefit to postpone filing suit, that delay was detrimental to his other clients. By representing Laurice Holmes and the Watkins children, when that representation was materially limited by his responsibilities to Korren Holmes, respondent violated *RPC* 1.7(b).

Respondent also violated *RPC* 1.5(c) by failing to prepare a written fee agreement. Despite respondent's claim that it had been lost, he submitted no other evidence that he had ever entered into a written fee agreement with his clients.

Also, respondent's concealment of Holmes' personal injury claim from CCBSS was deceitful. Respondent was aware that *N.J.S.A.* 44:10-4(a) requires the repayment of welfare benefits by welfare recipients who have a legal or equitable claim to funds. To circumvent this requirement, respondent tried to settle Holmes' case without filing a lawsuit. Respondent knew that, once he filed the complaint, CCBSS would discover the claim. Respondent's intention to deceive the welfare agency is clear from (1) his letter to defense counsel, in which he complained that "all my diligence on behalf of my clients will come to nothing if the lawsuit is filed;" and (2) his letters to Holmes and to Boyd stating that, because the insurance carrier would not communicate with him, he had no choice but to file the lawsuit and this "is how Welfare finds out about cases." Respondent's conduct in this regard violated *RPC* 8.4(c).

In addition, in his letter to Boyd, respondent notified her that, although settlement funds received on behalf of minors are required to be held until the children reach the age of majority, no one follows up on cases in which the settlement amount is less than $5,000. He advised Boyd that "[t]he check which will come in would be payable jointly to you and the children, and what you want to do as far as between the children, yourself,

and Portia, is up to you." Respondent, thus, counseled Boyd in conduct that he knew was illegal, criminal or fraudulent, in violation of *RPC* 1.2(d). Although the complaint alleged the above facts and respondent admitted them, the complaint did not charge respondent with a violation of *RPC* 1.2(d), only *RPC* 8.4(c). This latter charge rule appears to relate to respondent's concealment of Holmes' claim from the welfare agency. No evidence on this issue was introduced at the ethics hearing. Because respondent was not on notice that he could be found guilty of a violation of *RPC* 1.2(d), we declined did not deem the complaint amended to include that charge.

After respondent filed the lawsuit, he took no action to resolve the matter. Despite several letters from defense counsel inquiring about respondent's intentions, he did nothing to conclude the case. Even after the insurance proceeds were paid into the court's trust account, respondent did not try to reach an agreement on the disbursement of the funds. Instead, he allowed the funds to languish in the court's account, in violation of *RPC* 1.3.

In the *Gonzalez* matter, respondent engaged in conduct involving deceit, in violation of *RPC* 8.4(c). As in the *Watkins* matter above, respondent's failure to file a lawsuit in order to prevent the welfare agency from discovering his client's personal injury claim was unethical. In addition, he engaged in two conflict-of-interest situations: he represented (1) both a welfare recipient and non-welfare recipients; and (2) both the

driver and the passengers in an automobile accident. As he had done in *Watkins*, respondent refrained from filing a lawsuit to prevent the welfare agency from discovering the claim. Here, because Vicente was receiving welfare assistance, respondent avoided filing suit, while Gonzalez and Mercado, who were not receiving public assistance, were presumably interested in proceeding expeditiously to resolve their claims. Respondent failed to take prompt action to pursue the claims of Gonzalez and Mercado because of the welfare lien against Vicente, in violation of *RPC* 1.7(b).

Several Advisory Committee on Professional Ethics ("ACPE") opinions and cases have addressed the propriety of an attorney's representation of both the driver and passengers in a motor vehicle accident. *Opinion 156*, 92 *N.J.L.J.* 489 (1969) held that, pursuant to a 1968 Supreme Court directive, an attorney may not engage in such multiple representation, unless "there is a legal bar to the passenger suing his own driver, as for example, where they are husband and wife, unemancipated child and parent, or employees of the same employer and the accident occurred in course of their employment." Subsequently, the ACPE determined that, even if the driver and passenger consent to the multiple representation and waive their right to sue each other, an attorney may not represent both parties. *Opinion 188*, 93 *N.J.L.J.* 789 (1970).

In *Opinion 248*, 96 *N.J.L.J.* 93 (1973), however, the ACPE carved out an exception to the prohibition against multiple representation. That opinion held that, if it is

clear that liability for the accident rests completely on the other driver and if that driver's insurance coverage is sufficient to compensate the plaintiffs' claims, an attorney may represent both the driver and passenger. The opinion reasoned that, if the insurance coverage is inadequate, the attorney might improperly compromise the interests of one client over the other, while trying to settle both claims. In addition, the opinion noted that, in 1970, the Court, having abrogated the doctrines of spousal immunity and parent-child immunity, issued a directive stating that the same rules apply to all driver-passenger situations, regardless of the parties' relationship.

The ACPE later made it clear that, in these situations, disclosure and consent are required. *Opinion 253*, 96 *N.J.L.J.* 449 (1973); *Opinion 373*, 100 *N.J.L.J.* 646 (1977). In the former matter, the attorney represented the wife/passenger in an accident in which a parked car had been rear-ended. Although the driver/husband had retained separate counsel, the wife's attorney asked the ACPE if he could represent the husband with respect to his derivative claim for loss of consortium. The ACPE determined that, because the liability was "obvious," the representation was permissible, "provided the husband consents." In *Opinion 373*, the husband/driver and wife/passenger were injured in an automobile accident in which liability rested with the other driver. Although it was possible that the other driver's insurance was insufficient to cover the wife's claim, she was unwilling to file a claim against her husband and wanted to be represented by the

same counsel. The ACPE determined that the attorney could represent both driver and passenger, stating that "[t]he parties in the given situation are adults, capable of making an intelligent and informed judgement on the basis of the 'full disclosure of the facts and of the possible effect of such representation.'" The quote referring to full disclosure was taken from former Disciplinary Rule 5-105 (C) (now *RPC* 1.7b).

The Court, too, has held that such multiple representation, without disclosure and consent, is unethical. In *In re Pajerowski*, 156 *N.J.* 509, 516, the Court stated that "[b]y representing both the driver and passengers without disclosing the potential conflict of interest or obtaining his clients' consent to the multiple representation, respondent violated *RPC* 1.7(a) and *RPC* 1.7(b)." *See also In re Nadel*, 147 *N.J.* 558 (1997); *In re Grossman*, 140 *N.J.* 39 (1995).

Here, the hearing panel found that, because respondent indicated in his answer that the accident was a rear-end collision, there was no conflict of interest. Respondent's answer, however, did not indicate that this matter involved a rear-end collision. Respondent did not provide any information, whether in his answer or at the hearing, about the circumstances of the accident. Furthermore, respondent did not disclose the conflict or obtain his clients' consent to the multiple representation. To the contrary, in his answer, respondent admitted that, because he did not believe that a conflict of interest

existed, he had not advised his clients of it. We find that respondent's representation of both the driver and the passengers violated *RPC* 1.7(a) and (b).

Respondent also violated *RPC* 1.8(e) by lending $200 to Gonzalez. That rule prohibits attorneys from providing financial assistance to clients. Respondent stated that he had lent Gonzalez the money only after the claim had been settled and while they were awaiting the receipt of the settlement check. The record does not support respondent's assertion. Respondent settled the claim in April 1996 and disbursed the funds to Gonzalez in May 1996. The note that Gonzalez signed is dated September 22, well before respondent settled the case.

In addition, respondent tried, albeit unsuccessfully, to conceal the loan to Gonzalez. Upon disbursing the funds to his client, respondent omitted any reference to the $200 loan in the settlement statement. He also issued two checks to Gonzalez: one for $200 and one for the balance of the settlement proceeds. Gonzalez endorsed the $200 check to respondent, who also signed it. By omitting any reference to the loan on the settlement statement and by issuing to his client the check for the loan payment, he attempted to conceal the financial assistance to Gonzalez, in violation of *RPC* 8.4(c). The hearing panel determined that respondent's efforts to conceal the loan violated *RPC* 8.4(a). However, the deceitful nature of his conduct amounted to a violation of *RPC* 8.4(c).

On the other hand, although the complaint charged respondent with a lack of diligence, the record does not contain clear and convincing evidence of a violation of *RPC* 1.3. He was retained in March 1994 and settled the case in April 1996. Respondent resolved the matter within two years. Accordingly, we determined to dismiss that charge.

In the *Santiago* matter, the client relocated to Philadelphia without notifying respondent of her new address. The record does not indicate if respondent made any reasonable efforts to locate her. Neither respondent nor the presenter introduced any evidence in this regard. Accordingly, we dismissed the charge of a violation of *RPC* 1.3.

It is undisputed, however, that respondent lent Santiago $470 in a series of small loans from July 1994 through May 1995. All of these loans were memorialized by promissory notes. At oral argument, respondent conceded that the loans to Santiago were unethical. By providing financial assistance to a client, respondent violated *RPC* 1.8(e).

In *Hernandez*, respondent concealed from the insurance carrier the death of his client. Respondent was retained in October 1992 to pursue an uninsured motorist claim. Although Hernandez passed away in July 1995, respondent failed to disclose that information to MTF, the insurance carrier. It was not until after the case was settled that MTF learned of Hernandez' death. In his August 29, 1995 letter to Hernandez' widow, Carmen Troche, respondent indicated that he was trying to settle the case without disclosing his client's death. Indeed, respondent admitted both in his answer and at the

hearing that he intentionally concealed his client's death from MTF. According to respondent, there is no duty to disclose the death of a client because the insurance carrier, upon receiving settlement documents signed by a third person, could negate the settlement. In addition, respondent testified that he found it "almost impossible" to believe that disclosure is required because that would "completely destroy your case." We rejected both of respondent's arguments. Obviously, any circumstance or event that affects the nature or value of the case requires disclosure. Clearly, the death of a client must be disclosed to interested parties, such as an insurance carrier against whom a claim has been filed. The fact that the insurance company could reject the settlement after discovering the client's death does not vitiate the attorney's affirmative duty to share that information. "In some situations, silence can be no less a misrepresentation than words." *Crispin V. Volkswagenwerk, A.G.*, 96 *N.J.* 336, 347 (1984). Respondent's concealment of his client's death from MTF violated *RPC* 8.4(c). S*ee In re Forrest*, 158 *N.J.* 429 (1999).

Respondent also violated *RPC* 1.8(e) by lending Troche $610. As in *Gonzalez*, respondent omitted any reference to the loan on the settlement statement, mentioning it only in a separate letter. Furthermore, respondent's attempt to conceal the financial assistance to his client violated *RPC* 8.4(c).

As to Troche's power-of-attorney, although respondent claimed that he had little to do with it, his conduct surrounding its execution was unethical. According to

respondent, because Troche refused to sign the insurance settlement check, he arranged for her to visit his office to sign a power-of-attorney authorizing him to sign the check in her behalf. Once Troche was in his office, however, she signed the insurance check. There was, thus, no reason for her to execute the power-of-attorney. Respondent, nonetheless, obtained her signature and sent the document to his former secretary for notarization. Respondent admitted in his answer that, knowing that Troche had neither appeared before his former secretary, nor signed the power-of-attorney in her presence, he asked his former secretary to notarize the document. Respondent's conduct in this context violated *RPC* 8.4(c).

Respondent's conduct in *Murphy* was inexplicable. In that case, respondent represented Murphy in a personal injury claim, following a rear-end collision. Although the welfare agency notified respondent of its interest in Murphy's personal injury claim and directed him not to disburse any settlement proceeds without first obtaining CCBSS's prior approval, respondent failed to inform the welfare agency when he settled the claim. He did not inform the welfare agency of the settlement for years, despite his periodic receipt of letters from CCBSS. Finally, after the welfare agency learned that respondent had settled the case years earlier, it filed suit and obtained a judgment against respondent, which remained unsatisfied as of the time of the ethics hearing.

Respondent contended that he had a prior lien in the case because, before he learned of the welfare agency's interest in Murphy's personal injury claim, he had performed legal services in her behalf in municipal court. CCBSS did not dispute respondent's claim and indicated to him that he could take his legal fees before disbursing the balance of the settlement proceeds. Respondent acknowledged that the welfare agency had been "more than fair" in this regard. Yet, as of the ethics hearing, respondent still had not billed Murphy for his legal services. Respondent alleged that the $10,000 settlement proceeds remained in his trust account.[4]

Respondent's failure to deliver the funds to CCBSS violated *RPC* 1.3 and *RPC* 1.15(b). Although there might be overtones of deceit in respondent's failure to disclose the settlement to CCBSS, the complaint did not charge him with a violation of *RPC* 8.4(c). Furthermore, the record developed below does not contain clear and convincing evidence of this violation.

In addition to the loans made to Gonzalez and Troche discussed above, respondent made twenty-six separate loans to clients, all of which were repaid from settlement proceeds. Respondent's financial assistance to these clients violated *RPC* 1.8(e). Moreover, respondent's unsuccessful attempt to conceal these loans violated *RPC* 8.4(c).

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[4] The OAE investigator reviewed respondent's trust account records. There is no allegation that the funds did not remain intact in respondent's trust account.

Rather than listing the loans in the settlement statements and making the loan payments directly to himself, in each instance respondent omitted the loans from the settlement statements and issued two checks to his clients: one for the payback of the loan and the other for the balance of the settlement proceeds. He then obtained the clients' endorsement on the check for the loan. Respondent's explanation — that his bank would not cash the checks for his clients without his signature — failed to address why the clients endorsed the checks to him.

With respect to the recordkeeping violations, the record shows that respondent failed to maintain required records, had numerous unidentified items and maintained client ledger cards with open balances, all in violation of *RPC* 1.15(d).

Lastly, with respect to a pattern of neglect, we generally require a showing of neglect in at least three matters, before finding a violation of *RPC* 1.1(b). *See In re Baiamonte*, 170 *N.J.* 184 (2001). Because we did not find negligence in any of the present matters, we dismissed the charge of pattern of neglect.

In sum, respondent was guilty of the following unethical conduct: (1) *Watkins* – lack of diligence, failure to prepare a fee agreement, conflict of interest and conduct involving dishonesty, fraud, deceit or misrepresentation; (2) *Gonzalez* – two conflicts of interest, financial assistance to a client and two instances of conduct involving dishonesty, fraud, deceit or misrepresentation; (3) *Santiago* – financial assistance to a

client; (4) *Hernandez* – financial assistance to a client and two instances of conduct involving dishonesty, fraud, deceit or misrepresentation; (5) *Murphy* – lack of diligence and failure to promptly deliver funds to a third party; (6) numerous loans to clients; and (7) recordkeeping deficiencies. Respondent's actions in these matters demonstrated a disturbing inability or unwillingness to conform to the standards of the profession.

There remains the issue of the quantum of discipline. Generally, in cases involving a conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. *In re Berkowitz*, 136 *N.J.* 134 (1994); *In re Guidone*, 139 *N.J.* 272 (1994). In *In re Nadel, supra*, 147 *N.J.* 558 (1997), a reprimand was imposed on an attorney who represented one driver against another driver and later represented a passenger against both drivers. In a similar case, *In re Grossman, supra*, 140 *N.J.* 39 (1995) a three-month suspension was imposed where the attorney represented both the driver and passenger in a personal injury lawsuit, grossly neglected the case, settled the case without his clients' consent, failed to communicate with his clients and misrepresented the status of the case to his clients.

Respondent's actions to prevent the welfare agency from learning of his clients' personal injury claims may be analogized to conduct involving failure to disclose secondary financing in real estate transactions. In both cases, in order to obtain an undeserved financial advantage for their clients, attorneys conceal information that they

know should be revealed. Attorneys who fail to disclose secondary financing have received discipline ranging from a reprimand to a term of suspension. *See In re Sarsano*, 153 *N.J.* 364 (1998) (reprimand for concealing secondary financing from primary lender and preparing two different RESPAs, in violation of *RPC* 8.4(c)); *In re Nowak*, 159 *N.J.* 520 (1999) (three-month suspension where attorney, who engaged in a conflict of interest situation by representing both the second mortgage holders and the buyers in a real estate transaction, prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information). If other acts of misconduct are present, the discipline imposed has been more severe. *See In re Fink*, 141 *N.J.* 231 (1995) (six-month suspension for failure to disclose secondary financing in five matters by using dual RESPAs and false affidavits; the attorney was also guilty of gross neglect, commission of a criminal act, taking a false *jurat* and conduct prejudicial to the administration of justice); *In re Newton*, 157 *N.J.* 526 (1999) (one-year suspension for multiple conflicts of interest in real estate transactions, preparing false and misleading RESPAs and taking a false *jurat*).

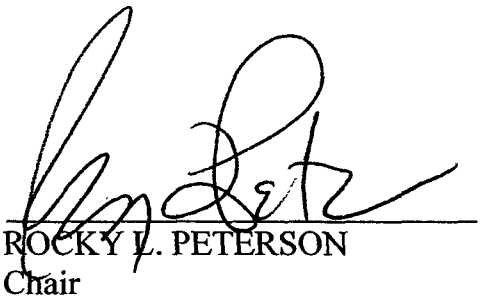
Here, respondent also concealed the death of a client, *see In re Forrest, supra*, 158 *N.J.* 429 (1999) (attorney suspended for six months for failure to disclose to his adversary, to an arbitrator and to a court the death of his client in order to obtain a personal injury settlement), made improper loans to clients and failed to follow

recordkeeping rules, *see In re Daniels*, 157 *N.J.* 71 (1999) (reprimand) and *In re Rubin*, 153 *N.J.* 354 (1998) (reprimand). In addition, respondent tried to conceal the loans by omitting any reference to them in settlement statements and by issuing checks for the loan payments to his clients, who then endorsed the checks to him. Finally, respondent failed to prepare a written fee agreement and exhibited lack of diligence. We found respondent's lack of remorse an aggravating circumstance.

Based on the foregoing, a five-member majority voted to impose a one-year suspension. Before respondent may apply for reinstatement, he must submit the report of a mental health professional approved by the OAE, attesting to his fitness to practice law. In addition, within 120 days of his reinstatement, he must complete six hours of professional responsibility courses offered by the Institute for Continuing Legal Education and submit to the OAE proof of successful completion of those courses. Lastly, we are referring this matter to the OAE to perform an audit of respondent's books and records.

Two members dissented, voting for a two-year suspension. Two members did not participate.

We further required 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 John de Laurentis
Docket No. DRB 02-007

Argued: March14, 2002

Decided: April 12, 2002

Disposition: One-year suspension

Members	*Disbar*	*One-year Suspension*	*Two-year suspension*	*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:		5	2				2

Isabel Frank 4/17/02
Isabel Frank
Deputy Chief Counsel