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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-048

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IN THE MATTER OF :  
MARIANO CRUZ :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_ :

Decision

Argued: April 17, 2003

Decided: June 24, 2003

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's two-year suspension in South Carolina.

Respondent was admitted to the New Jersey bar in 1993 and to the South Carolina bar in 1996. Since September 30, 2002, he has been on the New Jersey Supreme Court's

ineligible list for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He has no history of discipline in New Jersey.

As the result of a number of grievances filed against respondent and his apparent abandonment of his law practice, the Supreme Court of South Carolina temporarily suspended him on February 23, 2001. In taking this action, the Court determined that respondent posed "a threat of serious harm to the public or the administration of justice." Exhibit A to the OAE's brief. On August 8, 2002, respondent entered into an agreement for discipline by consent with the Disciplinary Counsel to the Supreme Court of South Carolina. Respondent admitted that he did not cooperate with disciplinary authorities and that he mishandled five client matters. Ultimately, on November 12, 2002, respondent was suspended in South Carolina for a twenty-four month period. The Court denied his request for the suspension to be retroactive to the date of his temporary suspension.

### The Key Matter

In June 1998, respondent and Michael Gillen were partners in a law firm. In or about June 16, 1998, the firm was retained to represent Macie Key in connection with an automobile accident that occurred in December 1997. Gillen negotiated a settlement with the insurance company for the policy limits of \$100,000.

On or about July 21, 1999, respondent dissolved his partnership with Gillen. He then had Key sign a letter terminating Gillen's representation of her interests. Shortly thereafter, respondent told the insurance company adjuster that he and Key would settle

her claims for the policy limits and sign mutual releases in exchange for a check made payable to respondent and Key. The adjuster sent to respondent a proposed settlement agreement and a release of all claims. Respondent replied by writing on the adjuster's letter, "I agree and consent to the above-listed term," and signed the notation as Key's attorney.

Although Key was either unable to or could barely read, she signed the release, based on respondent's advice. Respondent did not read the release to Key or explain to her its legal significance. After the release was executed, respondent contacted another insurance company about underinsurance motorist coverage. That insurance company refused to settle, however, because it and the insured had been released from all claims by the release previously signed by Key at respondent's advice. Key was, therefore, unable to collect up to \$30,000 of underinsurance coverage.

After the claim was settled, Gillen filed suit against respondent, Key and another attorney, alleging that respondent had failed to pay him his portion of attorneys' fees. Respondent answered the complaint on his and Key's behalf. Because Key had a potential claim against respondent for failing to secure underinsured motorist coverage, respondent created a conflict of interest by filing an answer on Key's behalf, failing to inform her of the conflict or the potential claim she had against him and failing to advise her to seek the advice of independent counsel.

On May 19 and 20, 2000, Gillen's attorneys wrote to respondent concerning the conflict of interest. Respondent, however, failed to inform Key of the conflict and failed to withdraw as her attorney.

By court order dated July 17, 2000, respondent was removed as Key's counsel and she was advised to retain independent counsel. Respondent refused to cooperate with Key's new attorney and did not turn over Key's file, despite the attorney's repeated requests.

Notwithstanding the court's order removing respondent as Key's counsel, on July 27, 2000, he prepared a document for Key's signature titled "Revocation of all Power of Attorneys." Respondent advised Key to execute the document. She had previously executed a power-of-attorney in favor of her son. Although respondent had informed Key that he would file the document, he failed to do so.

On that same date, respondent prepared an affidavit for Key's signature, which he intended to submit in support of his motion for summary judgment in the Gillen suit. The affidavit stated as follows, in relevant part:

I am satisfied with the services of Mariano F. Cruz. He negotiated my hospital lien of \$80,000.00 to \$40,000.00. Therefore, my portion of the settlement is \$35,000.00 after paying the lien. I receive [sic] more from the \$100,000.00 than I would have received from an additional \$30,000.00 underinsured motorist, since if I had recovered there, the hospital lien would not have been negotiated and I would have to pay the hospital \$80,000.00.

\* \* \*

I have ratified the General Release.

The affidavit was an attempt on respondent's part to avoid responsibility toward Key, both professionally and financially. Respondent failed to explain to Key the legal consequences of the affidavit. He also failed to advise her to consult with independent

counsel before signing it. Respondent prepared both documents after the court had removed him as Key's attorney.

### The Burris Matter

Ida Burris retained respondent to represent her in a wrongful termination case against Sullivan Carson, Inc. She paid him a \$300 retainer and \$148 for deposition costs. Respondent filed an action in federal court on Burris' behalf. Respondent did not notify her that he would be leaving his practice in South Carolina to relocate to North Carolina and then to California. Respondent failed to return Burris' telephone calls, failed to communicate with her, closed his practice and moved without notifying her. Respondent also failed to return her file. Ultimately, Burris obtained her file from another attorney with whom it was left. That attorney, however, was licensed to practice law in California, not in South Carolina.

Respondent did not file a motion with the court to be relieved as Burris' counsel or take any other action to protect her interests, before he left South Carolina.

Although respondent initially replied to the disciplinary authorities' request for information, he later failed to submit an amended reply, as promised, and failed to reply to their subsequent requests for information.

### The Reed Matter

Velma Reed and her husband retained respondent to file a bankruptcy action on their behalf. Although respondent filed a Chapter VII action on or about April 21, 2000, he did not take necessary steps to protect the Reeds' property.

*Afterwards, respondent abandoned his law practice and moved out of state without notifying his clients and without taking steps to protect the Reeds' interests in their bankruptcy proceeding. He also failed to reply to Ms. Reeds' inquiries about the status of her case and failed to turn over the file to the Reeds.*

When respondent closed his law practice and moved out of state, he left many of his client files, including the Reeds' file, with an attorney who was not licensed to practice law in South Carolina.

Respondent also failed to reply to three letters from the disciplinary authorities, seeking a reply to the Reeds' grievance.

### The Brammer Matter

In or about May 2000, Karon Brammer retained respondent to file an action to quiet title on her Myrtle Beach property. Brammer was a resident of North Carolina. She paid respondent a fee of \$1,700 and signed a retainer agreement that respondent had mailed to her. Respondent assured Brammer that the \$1,700 would be held in his trust account until earned and that he would refund any unearned portion of the retainer.

After receiving his fee, respondent failed to reply to Brammer's telephone calls, failed to file an action to quiet title or otherwise take any other action on her behalf,

abandoned his law practice and moved out of state without notifying Brammer. Respondent also failed to return her file and to take appropriate steps to protect her interests, before he left South Carolina.

Brammer eventually located respondent in or about October 2000. At that time, he assured her that he would refund a portion of her fee. In November 2000, he mailed her a check in the amount of \$1,000, drawn on his wife's account, not his trust account. Subsequently, without any notice or explanation to Brammer, respondent stopped payment on the check. Respondent left Brammer's file with an attorney not licensed to practice law in South Carolina.

The disciplinary authorities sent three letters to respondent from December 15, 2000 to January 9, 2001, seeking a reply to Brammer's grievance. Respondent did not submit a reply.

#### The Horne Matter

In May or June 1999, Timothy Horne retained respondent for a bankruptcy matter. At that time, Horne was at least two payments behind on his mortgage. He told respondent that he did not want to lose the house because it had belonged to his grandfather.

Respondent failed to advise Horne to keep his mortgage payments current. He also failed to promptly file for relief from Horne's remaining debts until November 1999. In the interim, foreclosure proceedings were filed against Horne. Afterwards, respondent

received a settlement offer from the mortgage company, which included payment terms that Horne could not meet. Respondent then filed a Chapter VII bankruptcy action.

Respondent failed to communicate with Horne and to reply to all of his inquiries. As a result, Horne discharged respondent and retained another attorney, who converted his case into a Chapter XIII proceeding to prevent the loss of Horne's house.

Respondent failed to reply to a motion filed by the mortgage company and failed to file a motion for an extension of time to file an answer, even though he had been paid one-half of the fee quoted to the client.

When respondent's services were terminated, he tendered a check to Horne for \$125, but did not submit an accounting. The check included the notation: "Termination of representation – full refund." Horne's new attorney returned the check to respondent with a request that it be re-issued without the "full refund" language. Respondent refused to reissue the check.

On or about March 15, 2000, the attorney filed a motion for the return of the legal fees. Respondent filed a reply in opposition to the motion. Ultimately, the parties entered into a consent order requiring respondent to refund \$1,250, at a rate of \$75 per week, to be paid to the Chapter XIII trustee beginning May 5, 2000. When respondent failed to make any payments, on August 30, 2000, the bankruptcy judge found respondent in willful contempt of his previous order, and required him to pay the entire amount within seven days and also to pay the debtor's legal fees and costs of approximately \$471.



Although respondent initially cooperated with the disciplinary authorities' inquiries in this matter, he later ignored their requests for information.

### Failure to Cooperate

After respondent left California, he relocated to New Jersey. He wrote to the South Carolina Office of Disciplinary Counsel requesting that all future correspondence be forwarded to him at an address in Hackensack. On March 12, 2001, the Office of Disciplinary Counsel obtained a subpoena ducus tecum for five client files and bank records. The subpoena was mailed to respondent's New Jersey address. Respondent, however, failed to comply with the subpoena and to provide the requested documents.

On March 26, 2001, respondent wrote to the Office of Disciplinary Counsel, expressing his desire to discuss pending cases and to submit written replies. Thereafter, the Attorney General's Office sent to respondent's New Jersey address copies of the notices of full investigation and letters of complaint regarding pending cases. Respondent ignored them as well.

Respondent admitted that he violated South Carolina disciplinary rules. Those rule violations correspond to the following New Jersey violations: RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.2(a) (failure to abide by clients' decisions concerning the objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with clients); RPC 1.7 (conflict of interest), RPC 1.9 (conflict involving former client), RPC 1.15 (failure to keep clients' funds in a separate account and failure to keep records of such funds), RPC 1.16 (failure to withdraw from

representation and to protect clients' interests upon termination of the representation), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

\* \* \*

Upon a de novo review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), we adopted the findings of the Supreme Court of South Carolina.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), which directs that

[t]he Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) The disciplinary or disability order of the foreign jurisdiction was not entered;

(B) The disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) The disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) The procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) The misconduct established warrants substantially different discipline.

We agree with the OAE that a review of the record did not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). The OAE suggested that a three-year suspension, rather than the two-year suspension imposed in South Carolina, was the appropriate discipline in New Jersey. The OAE reasoned that, because the South Carolina Supreme Court did not make the suspension retroactive to respondent's temporary suspension, the total suspension imposed there was approximately forty-five months.

In New Jersey, attorneys who have abandoned their clients and/or engaged in other serious violations have received lengthy suspensions. See In re Mintz, 126 N.J. 484 (1992) (two-year suspension where attorney engaged in a pattern of neglect, abandoned four matters, failed to maintain a bona fide office and failed to cooperate with disciplinary authorities); In re Foushee, 149 N.J. 399 (1997) (three-year suspension where, in a series of four matters, attorney displayed gross neglect, failure to communicate, failure to provide written fee agreements, misrepresentations and failure to cooperate with disciplinary authorities); In re Grossman, 135 N.J. 91 (1994) (three-year suspension where attorney disappeared and abandoned approximately two hundred cases after misrepresenting to the courts and various clients that their cases had been settled; his violations included gross neglect, pattern of neglect, failure to abide by clients' decisions,

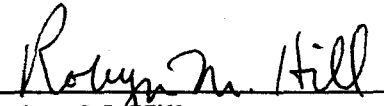
lack of diligence, failure to communicate, false statement of fact to tribunal and third persons, commission of a criminal act, misrepresentations and conduct prejudicial to the administration of justice); and In re Terry, 137 N.J. 4 (1994) (three and a half-year suspension for attorney who abandoned three clients, failed to deliver funds to a third person and failed to cooperate with disciplinary authorities).

Based on the foregoing, we found that respondent's abandonment of his clients' legal matters warrants a lengthy suspension. We were persuaded, however, that a two-year suspension, rather than the three-year term urged by the OAE, adequately addresses the nature of respondent's ethics offenses. We so voted. We also determined that respondent should not be reinstated in New Jersey until he is reinstated in South Carolina.

Two members did not participate.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Robyn M. Hill  
Chief Counsel

**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Mariano F. Cruz

Docket No. DRB 03-048

Argued: April 17, 2003

Decided: June 24, 2003

Disposition: Two-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Two-year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>							X
<i>Holmes</i>		X					
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
<i>Total:</i>		7					2

*Robyn M. Hill*

Robyn M. Hill  
Chief Counsel