

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-300

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IN THE MATTER OF  
HILDA BURNETT-BAKER  
AN ATTORNEY AT LAW

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Decision

Argued: October 16, 1997

Decided: February 17, 1998

J. Patrick Roche appeared on behalf of the District VB Ethics Committee.

Cynthia Hardaway appeared on behalf of respondent.

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

This matter was originally before the Board based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"). On June 28, 1996 the Board remanded

the file to the DEC for a supplemental hearing in order to give respondent the opportunity to present any defenses she might deem appropriate.

The complaint alleged violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) and (b) (failure to communicate); RPC 1.16 (improperly terminating the representation); and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

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Respondent was admitted to the New Jersey bar in 1983. She was privately reprimanded on February 2, 1993 for gross neglect and failure to communicate in two real estate matters and failure to turn over the file to new counsel. On October 15, 1997, the Court imposed a three-month suspension for respondent's gross neglect and pattern of neglect, lack of diligence, failure to communicate and misrepresentation of the status of the case in a matter in which she represented a client in both a wrongful termination case and a workers' compensation case. In re Burnett-Baker, 151 N.J. 483(1997).

During the time relevant to this case, respondent was engaged in the private practice of law in East Orange, New Jersey, and later in North Carolina.

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The issue in this matter is whether respondent was retained to represent the buyer of real estate, R. Alexander Daly, M.D. ("grievant"), in a suit stemming from the real estate transaction. According to grievant, sometime in mid—or late 1990 he retained respondent to file an answer in a suit arising from the real estate matter. According to grievant, respondent did not file an answer or inform him of her failure to do so. Although grievant recalled paying a retainer to respondent by check, he was unsure of the amount. Grievant did not produce the canceled check, claiming that it had been destroyed in an office fire.

On April 22, 1991 the seller obtained a default judgment against grievant for \$43,000, representing the amount of the deposit plus interest. There were no developments in the matter until just after the entry of default. It is uncontroverted that respondent, who had relocated to North Carolina, attempted to vacate the default by filing a notice of appeal with the Appellate Division on June 5, 1991. The notice of appeal was rejected, however, because by the time it was filed, respondent no longer maintained a law office in New Jersey. The Appellate Division referred respondent to R.1:21-2, governing pro hac vice appearances. Respondent did no further work on the case.

At the original DEC hearing it was not clear when respondent moved to North Carolina. On remand, respondent submitted a copy of a letter from the North Carolina Attorney General's Office, confirming respondent's acceptance of a position in that office. The letter required respondent to start her job on July 25, 1990. Respondent testified that she moved to North Carolina in mid-July 1990 and reported for work on July 25, 1990.

Respondent further testified that she did not return or travel to New Jersey for at least one year after the move to North Carolina. Respondent denied that she was ever retained by grievant to file an answer or to perform any work on his case prior to the entry of the default judgment.

According to respondent, grievant was the boyfriend of Esther Watley, a friend from New Jersey whom respondent met when respondent was Chief Counsel to the Newark Board of Education, the position she left to relocate to North Carolina. Respondent admitted discussing grievant's matter with him and Esther on several occasions before moving to North Carolina, but claimed that the conversations were informal in nature and only incidental to social visits or calls. According to respondent, grievant had already retained an attorney for the real estate transaction, Veronica Anthony, Esq. When it appeared to respondent that grievant was not fully cooperating with Anthony, respondent urged grievant's cooperation, in order to protect his position in the transaction. According to respondent, her involvement in the case at this point was limited to those conversations, which were designed primarily to help her friend, Esther, by motivating grievant into action.

Respondent and Esther remained in telephone contact after respondent's move. Respondent testified that she became more involved in the case after moving to North Carolina. She recalled one such contact in the spring of 1991, when Esther told her that a default judgment had been entered against grievant. Respondent immediately agreed to file the notice of appeal from North Carolina because it appeared to her that grievant was almost

out-of-time to appeal. Respondent claimed that she was unaware at the time that she needed a New Jersey office to do so. According to respondent, she called grievant after filing the notice of appeal and told him that he needed New Jersey counsel to represent him in the appeal and to pursue other remedies, such as vacating the default judgment. Respondent testified that she made it clear to grievant that the scope of her representation was strictly limited to filing the appeal "because it was not something that I thought I should continue to be involved,[sic] because I knew I couldn't do it. I was not in New Jersey".

According to respondent, when she told grievant that she would file the notice of appeal from North Carolina, she simultaneously referred grievant to a New Jersey attorney, Linwood Jones, Esq., to handle the lawsuit. Respondent stated that she and Jones had been acquainted since law school and that Jones had represented her in at least one real estate transaction. In fact, respondent testified, she had called Jones from North Carolina to ask him to gather certain information necessary to the filing of the appeal. Respondent recalled that she had taken notes, when Jones had called her back with the information. Indeed, grievant recalled consulting with Jones after that conversation with respondent and remembered not retaining him to represent him in the appeal.

Jones also testified at the remand hearing. He remembered a consultation with grievant. Although Jones' recollection was murky, he remembered that grievant's was a real estate matter with a "problem" and that grievant did not retain him to pursue the appeal, probably because he lacked funds to pay the legal fee.

Grievant recalled that, although he did not retain Jones to handle the appeal, he went back to his original attorney, Anthony, after respondent filed the notice of appeal; he requested that Anthony "check" on the matter for him. Because Anthony did not testify at the original hearing, the true extent of her role in the matter is unknown.<sup>1</sup>

With respect to the alleged violation of RPC 8.1(b) for failure to cooperate with the DEC, respondent testified that at the time of the initial investigation, in early 1992, she was suffering from a lung ailment that made it difficult for her to breathe. In addition, respondent stated, she tired easily. She claimed that she had also been involved in a car accident. Finally, respondent contended that she had consulted with several New Jersey attorneys regarding her case, but did not have the financial resources to retain an attorney in New Jersey. According to respondent, all of these factors contributed to her failure to cooperate with the DEC investigation. Respondent testified that she filed her answer at the last possible moment because she was frozen by inaction. She had no explanation for the delay in filing an answer after her request for an extension. The hearing date was adjourned from April 1992 to June 1992 specifically to allow respondent to answer the alleged ethics violations.

Respondent acknowledged that

... there were a lot of things I could have done, and I probably - in hindsight, there's a lot of things I probably wish I had done. It's one of those things that for me is almost like it's - it's crippling. You don't - you don't really know what to do ... so

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<sup>1</sup> When testifying at the original hearing, grievant began to describe Anthony's involvement in the case but was cut off in mid-answer.

you do nothing . . . I did not feel as if I had it together enough that I could just do this.

Respondent also noted that she had been available by telephone to answer questions on the day of the hearing and that the DEC had not availed itself of the opportunity to take testimony by telephone. The presenter touched on this issue at the original hearing:

I don't know of any arrangements to be available by phone to answer any questions that we have during the hearing. I don't know of any procedure that we could follow for that.

\* \* \*

The DEC determined that, compared to that of respondent and attorney Jones, grievant's testimony regarding respondent's alleged involvement in the civil action prior to the entry of default was not credible. The DEC further found respondent's and Jones' testimony credible and reversed its original findings of violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4.

The DEC found, however, that, upon termination of her representation, respondent did not take appropriate steps to protect grievant's interests and failed to notify grievant of the termination in writing, in violation of RPC 1.16.

Finally, the DEC found a violation of RPC 8.1(b) for respondent's failure to cooperate with the DEC until the evening of the adjourned date, in 1995.

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Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence.

Now with the benefit of respondent's own testimony, the Board finds that respondent did not represent grievant prior to the filing of the notice of appeal. Indeed, respondent moved to North Carolina in July 1990 to pursue a career in the North Carolina Attorney General's Office. Respondent produced a copy of a letter confirming that her job would start on July 25, 1995. Moreover, respondent did not return to New Jersey until late 1991, well after the date cited by grievant for his retention of respondent's legal services. There is no evidence or testimony that grievant was concerned about the alleged representation or that he contacted respondent prior to the entry of the default judgment to ask about the status of the case. Likewise, there is no evidence that grievant discussed with respondent any displeasure with her alleged handling of his case, including respondent's alleged failure to file an answer to the original complaint. Yet, respondent testified that she and grievant discussed filing an appeal and retaining New Jersey counsel. It strains credulity that grievant would not complain to respondent about these past events, unless respondent was not responsible for them.

On the issue of the alleged retainer agreement, grievant alleged that he paid respondent's retainer by check. He could not, however, recall the amount of the retainer. According to grievant, the check was destroyed by fire. The fact that the check was never produced, either by grievant through his bank or by the DEC through other means, casts



serious doubt as to its existence, the existence of a retainer and grievant's overall credibility. For all of these reasons the Board finds that the DEC correctly found no attorney-client relationship before the entry of default and properly dismissed the alleged violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4.

With regard to the alleged violation of RPC 1.16, it appears from respondent's testimony that, in a telephone conversation with grievant, she explicitly limited her representation to the filing of the notice of appeal. During that same conversation, respondent urged grievant to consult with Jones, a New Jersey attorney, because she could not handle the matter from North Carolina. Grievant then consulted with Jones, but chose not to retain him, as confirmed by Jones' testimony. Grievant then apparently sought out his original attorney, Anthony, to look into the case. It is likely that grievant consulted with Jones and Anthony because he knew that respondent had told him that her involvement in the case would be limited to filing an appeal. Under these circumstances, the record supports a finding that respondent verbally limited the scope of her representation to the filing of the notice of appeal, that grievant was aware of the limitation and that, for whatever reason, he chose not to retain Jones or other New Jersey counsel. Accordingly, the Board determined to dismiss the alleged violation of RPC 1.16, finding that there was not clear and convincing evidence that respondent did not adequately notify grievant of the limits of her representation.

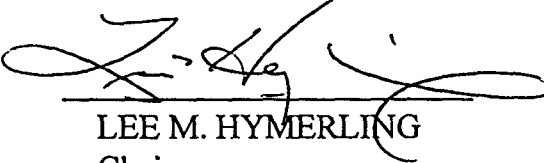
With regard to the remaining allegation of a violation of RPC 8.1(b), respondent was served with the original complaint on July 31, 1992. Respondent did not communicate with the DEC until her request, by letter of March 31, 1995, for a “continuance” of the scheduled April 7, 1995 hearing. In that request lies the wrinkle in this case. Despite respondent’s inaction for three years, the DEC adjourned the hearing to June 15, 1995, at respondent’s request. Yet, not until the evening of June 14, 1995 did respondent file her answer by facsimile and advise the DEC that she would not be appearing at the hearing because she was in North Carolina. The DEC could have reasonably expected, after respondent requested an adjournment, that she would cooperate fully. Instead, respondent waited until the last possible moment to give the DEC information critical to its determination of the case, perhaps explaining why the DEC did not fully address the issue of respondent’s availability to answer questions by telephone when conducting the hearing on the following day. Nonetheless, and despite the manner in which respondent treated the ethics process, the DEC — and ultimately the Board — would have been in a far better position to review and decide the allegations of unethical conduct, had the DEC sought respondent’s testimony by telephone. The Board found that respondent’s failure to cooperate with the DEC after her adjournment request was in violation of RPC 8.1(b).

As to the issue of discipline. The imposition of an admonition would normally be the appropriate degree of discipline for an isolated instance of failure to cooperate with the ethics authorities. In the Matter of Robert P. Gorman, Docket No. DRB 94-437 (1995) (admonition

imposed where the attorney failed to cooperate in with an ethics investigation or to respond to the investigator's requests for information.) However, respondent's recent three-month suspension case went forward on a default basis because respondent failed to cooperate in the proceedings. Therefore, the Board has unanimously determined to impose a reprimand here, based on respondent's failure to cooperate in the case at hand, aggravated by her prior failure to cooperate with disciplinary authorities. In re Macias, 121 N.J. 243 (1990) (where the attorney received a public reprimand for failure to cooperate with the Office of Attorney Ethics during a random audit and failure to file an answer to the complaint); and In re Skokos, 113 N.J. 389 (1989) (where the attorney received a public reprimand for failure to cooperate with the district ethics authorities during an investigation and later, at the hearing in an ethics matter filed against him.)

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

Dated: 2/17/98

  
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

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

**In the Matter of Hilda Burnett-Baker**  
**Docket No. DRB 97-300**

**Argued: October 16, 1997**

**Decided: February 17, 1998**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
<b>Total:</b>			9				

*Robyn M. Hill* 3/16/98  
Robyn M. Hill  
Chief Counsel