

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB-97-106

IN THE MATTER OF
NEIL STERNSTEIN,
AN ATTORNEY AT LAW

DECISION

Argued: July 17, 1997

Decided: October 15, 1997

Peter J. Boyer appeared on behalf of the District IV Ethics Committee.

Carl D. Poplar appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). Four separate complaints charged respondent with the following ethics violations:

First Complaint

Count one (District Docket No. IV-93-43E — Wilson matter): RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 1.3 (lack of diligence), RPC 1.4(a) and

(b) (failure to communicate); count two (District Docket No. IV-93-48E — Borrelli matter): RPC 8.1(b), RPC 1.3, RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 4.4 (in representing a client, using means that have no substantial purpose other than to delay or burden a third person); count three (District Docket No. IV-93-67E — Irving Gutin matter): RPC 8.1(b), RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3, RPC 1.4(a) and (b), RPC 1.15(d) (recordkeeping requirements), R.1:21-6 and RPC 1.15(a) (failure to safeguard client's funds) (this matter was held in abeyance until testimony was taken in a related case involving Gutin's son and daughter-in-law); count four (District Docket No. IV-93-68E - Lane matter): RPC 8.1(b), RPC 1.1(a), RPC 1.1(b), RPC 1.3 and RPC 1.4(a) and (b).

Second Complaint

Count one (District Docket No. IV-93-84E — Logan matter): RPC 1.1(a), RPC 1.3, RPC 1.15(b) (failure to promptly deliver funds to client or third person), RPC 3.4(c) and RPC 8.1(b); count two (District Docket No. IV-93-85E — Bramble matter): RPC 1.1(a), RPC 1.3 and RPC 8.1(b); count three (District Docket No. IV-93-91E — Berg matter): RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal), RPC 3.3(a)(4) (knowingly offering false evidence), RPC 3.3(a)(5) (failure to disclose to a tribunal a material fact with knowledge that the tribunal may tend to be misled) and RPC 3.3(b) (making the duties under paragraph RPC 3.3(a) a continuing obligation until the conclusion of a proceeding); count four (District Docket No. IV-93-89E — Iris and

Matthew Gutin matter): RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a) and (b), RPC 1.15(d), RPC 8.1(b); count five (District Docket No. IV-94-06E — Franke matter): RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a) and (b) and RPC 8.1(b).

Third Complaint

The Moran Matter (District Docket No. IV-94-053E): RPC 1.2(d) (assisting a client in conduct known to be illegal, criminal or fraudulent), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d)(conduct prejudicial to the administration of justice) (count one); RPC 8.4(c) and RPC 8.4(d) (count two); and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count three).

Fourth Complaint

The Ferrell matter (District Docket No. IV-95-008E): RPC 1.1(a), RPC 1.3 and RPC 1.4(a) (count one) and RPC 8.1(b)(count two).

* * *

Respondent was admitted to the New Jersey bar in 1975. He maintained a law office in Woodbury, New Jersey until he received a three-month suspension for violations of RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1(b) in four matters. In re Sternstein, 141 N.J. 16 (1995). Respondent has not applied for reinstatement.

First Complaint

Count one - Patricia A. Wilson (District Docket No. IV-93-43E)

Patricia Wilson, the grievant, failed to appear at the DEC hearing. Respondent was charged with violations of RPC 1.3, RPC 1.4(a) and (b) and RPC 8.1(b). Wilson had retained respondent in connection with the filing of a Chapter 13 bankruptcy petition. Because she failed to appear, the DEC was unable to find clear and convincing evidence that respondent had violated RPC 1.3 and RPC 1.4(a) and (b).

As to the charge of a violation of RPC 8.1(b), the complaint alleges that the DEC sent three letters to respondent on May 24, 1993, June 17, 1993 and July 14, 1993 requesting a reply to the grievance. Respondent failed to reply to any of the DEC's requests for information.

The DEC concluded that respondent's conduct violated RPC 8.1(b).

Count two - Robin K. Borrelli (District Docket No. IV-93-48E)

Respondent represented James S. Borrelli ("James") in a divorce proceeding against Robin K. Borrelli ("Robin"), the grievant. Pursuant to a property settlement agreement, the former marital residence was to be sold and the proceeds were to be divided between the parties. James had moved out of town. The divorce judgment named respondent as James' attorney-in-fact to "exercise all powers necessary to convey the

marital residence on behalf of the husband."

An agreement of sale was signed and a closing was scheduled for April 30, 1993. The proceeds from the sale were to be used first to satisfy the first and second mortgages on the property, then for real estate commissions and other closing costs. From the balance, James was to receive \$5,000 and Robin the remainder.

According to respondent, James had consented to the deduction of respondent's fees from the \$5,000. It was not until the closing, however, that respondent learned of arrearages on the mortgage because Robin had not kept the payments current. Child support payments, for which James was responsible, were also in arrears and became an issue at the closing.

In view of the foregoing, the settlement proceeds were insufficient to pay the \$5,000 to James, although sufficient to satisfy overdue child support payments. According to respondent, he refused to go through with the closing because of these problems. Robin, however, suspected that respondent's refusal stemmed from James' inability to pay respondent's fees from the closing proceeds.

During the closing, Robin contacted James. As a result of their telephone conversation, James "faxed" the following letter to the closing site:

I, James S. Borrelli have authorized my attorney [respondent] to sign in my behalf the agreement of sale 129 Oldman's Creek Rd. under any circumstances.

[Exhibit C-12]

According to Robin, James wanted the property sold to avoid a foreclosure. She claimed that it was James' idea to send the "fax" and that her attorney had given respondent a copy of the "fax."

For his part, respondent contended that he had spoken to James on the date of the closing, but had not seen a copy of the "fax" before their conversation. Respondent explained that James had instructed him not to execute the settlement documents until the issue of overdue child support payments was resolved.

Because respondent refused to sign the closing documents, Robin's attorney contacted the court to request an emergent hearing. The parties appeared in court late that afternoon, at which time respondent was ordered to execute the closing documents so the settlement could be consummated. According to respondent, he agreed to the court appearance and afterwards signed the closing documents on behalf of his client, as ordered by the court.

After Robin filed a grievance against respondent, the DEC sent him three letters on June 2, 1993, July 2, 1993 and July 23, 1993, requesting a reply to the grievance. Respondent failed to reply to the DEC's requests for information.

The complaint charged respondent with violations of RPC 1.3, failure to act with reasonable diligence and promptness in the representation of his client and, in so doing, having no substantial purpose other than to delay or burden a third person, in violation of RPC 4.4. The complaint further charged that respondent's refusal to close title on the Borrellis' residence constituted a disregard of an obligation placed upon him by a tribunal,

in violation of RPC 3.4(c).

The DEC found that respondent failed to reply to its requests for information, in violation of RPC 8.1(b). The DEC was unable, however, to find clear and convincing evidence of any other violations. Specifically, the DEC found that respondent had not proceeded with the closing because of a dispute over the distribution of the settlement proceeds. The DEC noted that, although James had “faxed” a letter authorizing respondent to sign the closing documents, respondent had not had an opportunity to discuss with James the ramifications of signing the documents and the issue of who was responsible for the arrearages.

The DEC concluded that the judgment of divorce did not require respondent to sign closing documents, only gave him discretion to sign certain documents. The DEC believed that respondent had a good faith basis for questioning whether or not to go through with the closing. Notwithstanding that the court had to order respondent to convey the property, the DEC did not find that respondent failed to exercise reasonable diligence and promptness in representing his client. The DEC found no evidence that respondent was deliberately delaying or burdening the rights of Robin Borrelli or that respondent’s refusal to convey the marital residence constituted a disregard of an obligation placed on him by a tribunal. The DEC, therefore, found a violation of RPC 8.1(b) only.

Count three - Irving Gutin (District Docket No. IV-93-67E)

This matter is discussed below.

Count four - Joyce A. Lane (District Docket No. IV-93-68E)

The grievant in this matter, Joyce Lane, failed to appear at the DEC hearing. However, respondent testified about the personal injury matter for which Lane had retained him.

Lane retained respondent in connection with injuries sustained in an automobile accident in August 1992. The matter was settled in September 1992. The defendant in the matter was insured by the JUA. According to the complaint, respondent agreed to see that all of Lane's medical bills arising from the accident paid by the proper insurer. Lane claimed that she mailed the bills to respondent on several occasions and that he did not reply to any of her letters or telephone calls before or after the date her claim was settled.

The complaint charged respondent with gross neglect, pattern of neglect, lack of diligence and failure to keep his client informed of the status of her case.

Respondent testified at the DEC hearing about the steps he had taken in his client's behalf and also submitted various documents and correspondence to corroborate his actions.

As in the other matters, respondent failed to cooperate with the DEC investigation. Letters requesting a reply to the grievance were sent to respondent on September 3, 1993,

September 24, 1993, October 8, 1993 and December 2, 1993. Respondent failed to reply to any of the DEC's requests for information.

The DEC found no clear and convincing evidence to support the charges in the complaint, other than a violation of RPC 8.1(b). The DEC determined that respondent had taken action to resolve Lane's PIP claim. Specifically, the DEC found respondent had submitted the petition seeking payment of the PIP claim and had also given the DEC a satisfactory explanation of the actions he took to resolve the underlying tort action. The DEC noted that Lane had received a \$15,000 settlement as a result of respondent's efforts.

As to the charge of a violation of RPC 8.1(b), the DEC remarked that, if respondent had cooperated with the DEC investigation, the matter might have been easily resolved, thus saving the DEC considerable time and effort. The DEC specifically noted that, if respondent had timely replied to its requests for information, respondent would not have been charged with ethics violations in the Lane matter:

But this is another example of the problems created by [respondent's] failure to respond and the panel is moved to comment that we have seen this before with [respondent], that he has simply ignored numerous complaints and numerous attempts to give his assistance and cooperation until the eleventh hour, when he literally had no choice but to cooperate.

Respondent did not file an answer to the complaint in this matter until the date of the first DEC hearing, October 24, 1995. The DEC found that respondent's "very, very late submission of an answer" did not comply with the requirements of RPC 8.1(b).

Second Complaint

Count one - Julie L. Logan (District Docket No. IV-93-84E)

Although the grievant in this matter, Julie L. Logan, did not appear at the DEC hearing, the parties stipulated the following facts: Respondent represented Jeffrey Adams, Logan's ex-husband, in a divorce proceeding. During the course of the divorce, the court ordered Adams to use his tax refund to pay Logan's 1991 income taxes. Respondent, who was required to forward the appropriate sum to the IRS in behalf of Logan, received Adams' tax refund in January 1993. Respondent failed to pay Logan's tax obligation until October 1993. Respondent's failure to act diligently resulted in additional interest and penalties above the original tax obligation owed by Logan.

Respondent testified that the reason for his delay was a dispute between Adams and Logan about who was entitled to claim their five children as deductions on the tax forms. According to respondent, the parties' divorce had been extremely acrimonious, resulting in court appearances almost monthly. Respondent had held Adams' refund of \$7,791.88 in his trust account and had called Logan's attorney to ask what to do with the monies. Respondent claimed that, although he had written to Logan's attorney twice in March and had also discussed the problem with him at the courthouse, he had never received a reply about the distribution of the tax refund.

Respondent added that, because Logan delayed providing Adams with certain tax documents, respondent did not believe it proper to pay the penalty and interest accrued by Logan as a result of the delayed payment.

After Logan contacted the DEC, respondent failed to reply to three letters from the DEC, dated October 28, 1993, November 18, 1993, and November 25, 1993, seeking information about the grievance.

A formal complaint was forwarded to respondent on March 10, 1995 requesting an answer within twenty-one days. Thereafter, a second letter was sent on June 5, 1995 reminding respondent that he was required to file an answer in this and other matters. Respondent did not file an answer in this matter until November 21, 1995.

Notwithstanding respondent's explanation, the DEC found that there was clear and convincing evidence of each violation charged. The DEC found violations of RPC 3.4(c) (failure to comply with a court order), RPC 1.15(b) (failure to properly dispose of funds entrusted for the benefit of a third person), RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 8.1(b).

Count two - Shirley B. Bramble (District Docket No. IV-93-085E)

Shirley and Joseph Bramble retained respondent in connection with injuries sustained by Shirley in June 1997 at Miller's High Life Marina. After respondent filed suit on behalf of the Brambles, the case was submitted to arbitration on September 4, 1991. The arbitration resulted in an award of \$29,250, which the defendants rejected. The defendants then requested a trial. Respondent so advised the Brambles in a letter dated October 18, 1991. Apparently, as the matter approached trial, the defendants agreed to have a judgment entered against them in the original arbitration amount, together with

pre-judgment interest and costs. Respondent drafted an order and forwarded it to the defendants' attorney on December 9, 1992.

At some unidentified point, the Brambles learned that the Marina was planning to file for bankruptcy. They conveyed this information to respondent. According to Shirley, respondent told the Brambles that he was not familiar with bankruptcy law. Shirley claimed that, although she informed respondent about an attorney that could assist him in connection with the bankruptcy, she heard nothing further from respondent.

Respondent, in turn, maintained that he had informed the Brambles that, although he was experienced in bankruptcy law, the defendants had filed for bankruptcy in the District of Maryland, where he was not admitted to practice. Shirley denied that respondent ever informed her that the bankruptcy had been filed in Maryland.

According to respondent, he had explained to the Brambles that they would obtain a judgment against the defendants, not a "sum of money". The Brambles, however, disputed that respondent had ever explained that to them. According to Shirley, she and her husband never realized any monies from their claim.

After the bankruptcy was filed, respondent failed to take any action in the matter. Shirley telephoned respondent approximately ten times, from September to October 1993, to ascertain the status of her case. Respondent failed to reply to the calls. Shirley then contacted the DEC on October 25, 1993. Thereafter, the DEC sent respondent three letters requesting a reply to the grievance, on November 11, 1993, November 23, 1993 and December 9, 1993. Respondent failed to reply to the letters. Here, too, the DEC

served a complaint on respondent on March 10, 1995, requesting him to file an answer. A second letter was sent on June 5, 1995 giving respondent five days to file an answer. Respondent did not file an answer until November 1995.

Respondent was charged with violations of RPC 1.1(a), RPC 1.3 and RPC 8.1(b). The DEC did not find clear and convincing evidence that respondent's conduct constituted gross negligence, reasoning that he had handled certain aspects of the matter in a competent manner. The DEC found, however, that after the bankruptcy was filed respondent failed to act with reasonable diligence and promptness in representing his clients, in violation of RPC 1.3, and that respondent refused to comply or cooperate with the DEC investigation, in violation of RPC 8.1(b).

Count three - Stella Berg (District Docket No. IV-93-91E)

This grievance arose from an earlier ethics matter, District Docket No. IV-92-39E, involving Stella Berg. Stella was the widow of Robert L. Berg, who had been represented by respondent. The basis for the grievance in the first matter was that respondent had agreed to represent Berg in connection with an application to reduce support payments, but had failed to act. At the DEC hearing of July 1993, respondent admitted that the matter had not received the appropriate attention it deserved and agreed to reimburse Berg's retainer of \$500. Respondent did not do so until November 1994, after Berg's death.

The complaint alleged that respondent made false statements to a tribunal, in

violation of RPC 3.3(a)(1), offered false evidence, in violation of RPC 3.3(a)(4), and failed to disclose to a tribunal, during the time a decision was pending, that he had not made the promised refund, in violation of RPC 3.3(a)(5) and RPC 3.3(b).

The DEC did not find violations of RPC 3.3(a)(1) and (4). The DEC did not believe that, when respondent made the representations, he had deliberately attempted to deceive it. The DEC found, however, clear and convincing evidence that respondent failed to disclose to it, during the time that the decision was pending, that he had not made the promised refund. The DEC, thus, found a violation of RPC 3.3(a)(5) and RPC 3.3(b). The DEC remarked that respondent had had ample opportunity to advise the DEC panel or the presenter, or even Stella, that he was having difficulty with obtaining the money.

Count four - Iris and Matthew Gutin - (District Docket No. IV-93-89E) and Irving Gutin (District Docket No. IV-93-67E)

Respondent and Irving Gutin were neighbors and had known each other for approximately twenty years at the time that Gutin and his wife Edith retained him in 1988. Matthew Gutin and his wife Iris, Irving's son and daughter-in-law, who had also known respondent for a number of years, were residing in a house owned by Irving and Edith. On November 4, 1986, a fire erupted in Matthew and Iris's residence. Irving, Edith, Matthew and Iris hired a public adjustor, the Seleznov Adjustment Bureau, to attempt to recover monies from their insurer, the Cumberland Mutual Fire Insurance

Company ("Cumberland Mutual").

The nature and extent of the problems that arose between the Gutins and the public adjustor are unclear. Irving, however, believed that the adjustor was not doing its job. Apparently, Irving recovered proceeds from the insurance company and may not have reimbursed the adjustment bureau to the extent it believed it was entitled. Additionally, although Matthew and Iris received \$15,000 and signed a release, they believed they had the right to seek additional sums from their insurer. The public adjustor sued Iris and Matthew, as well as Irving and Edith. The Gutins, at least Irving and Edith, retained respondent to represent them in the suit and file a counterclaim. Irving Gutin signed a fee agreement with respondent calling for a \$500 retainer, the "minimum" payment for legal services "regardless of the amount of time actually spent on this case." Irving claimed that respondent had been hired to represent not only him and Edith, but also his son and daughter-in-law. Irving was to be responsible for all of the legal fees because his son had little money. The retainer agreement, however, does not list Matthew and Iris as respondent's clients.

Irving mailed respondent a \$500 retainer, believing that respondent would file a counterclaim against the adjustment bureau. Because they lived next door to one another, Irving Gutin would, on occasion, ask respondent how the case was progressing. Respondent would reply that he was working on it. Irving claimed that, because they were "friends," he accepted whatever respondent told him about the case.

On occasion Irving would also call respondent at his office. Rarely was he able

to speak with respondent. On those rare instances, respondent would tell him that he was working on the matter and that the courts were backlogged.

Ultimately, when Irving felt that the case was not progressing, he contacted another attorney to take over the representation. According to Irving, the new attorney attempted to obtain the file from respondent, to no avail. Eventually, the attorney learned that the Gutins' case had been "archived" by the court for lack of activity.

* * *

Iris and Matthew Gutin had obtained renter's insurance through the same insurer as Irving, Cumberland Mutual. After Iris and Matthew filed an insurance claim, they were required to go to the insurer's attorney's office to give a statement. Respondent represented them in their meeting with the insurer's attorneys. Matthew and Iris paid respondent \$200 for his assistance at that meeting.

Iris testified that she believed that respondent would represent them against the public adjustor. In fact, Iris accompanied Irving to the initial meeting with respondent. Iris attempted to contact respondent thereafter on a number of occasions, but he never returned her calls. Iris testified that she never knew whether respondent had asserted a claim in their behalf.

Matthew corroborated Iris's testimony about their belief that respondent would represent them in connection with the public adjustor's suit against them. Matthew and

Iris testified that they gave documents to respondent in connection with the matter. They explained that Irving was going to pay their legal fees because they had little money. In the past, when respondent had performed legal services for Matthew in connection with the family business, Irving had paid the legal fees.

Respondent, in turn, claimed that he was only retained to represent Irving and Edith and that he was not aware of the suit against Matthew and Iris.

Notwithstanding respondent's claim, the record contains documents indicating that respondent did, in fact, represent Iris and Matthew to some extent, at least before the complaint was filed against them. For example, Exhibit C-37 is a letter dated May 10, 1987 to respondent from the insurer's attorney about respondent's "clients," Matthew and Iris. Exhibit C-38 is a letter dated August 28, 1987 from respondent to Cumberland Mutual with the "re" listing Matthew and Iris Gutin, Irving and Edith Gutin. The body of the letter reads as follows:

Please be advised that I represent Matthew, Iris, Irving and Edith Gutin with regard to their claim arising out of the fire at their house. The Gutins had been represented by Seleznov Adjustment Bureau, however, they withdrew their representation which was accepted by my clients and their contract is terminated.

Similarly, in an August 25, 1987 letter, respondent wrote to the insurer's attorney on behalf of Matthew and Iris. Exhibit C-39. Respondent also wrote to Matthew and Iris on September 4, 1987. In that letter, respondent noted that he had received a call from the insurer indicating that it would not release any more payments without a payment to

the public adjustor. Exhibit C-40. Again, by letter dated October 16, 1987 to the insurer's attorney, respondent sought information about the status of Matthew and Iris's claim. Exhibit C-41. Finally, on October 27, 1987, respondent sent a letter to Iris and Matthew enclosing a copy of a letter from the insurance company's attorney and directing Matthew and Iris to make an appointment with respondent at his office. Exhibit C-43.

The DEC requested a reply to the Gutin grievance by letters dated September 1, September 24, and October 5, 1993. Respondent failed to reply to these requests for information and did not cooperate with the DEC investigation.

The DEC found that the record was unclear about the disposition of the Gutins' lawsuit, even though Irving claimed that it had been "archived." The DEC noted that, if the complaint had been dismissed, there would have been some documentation showing the disposition of the case. In the absence of any such proofs, the DEC was unable to find that respondent was grossly negligent in his representation of Irving Gutin. The DEC found not credible Irving's testimony on what precisely transpired in the lawsuit by Seleznov Adjustment Bureau against Irving and his wife. Moreover, the DEC found credible respondent's testimony that it would have been difficult to obtain a recovery from the adjustment bureau because the Gutins had executed releases and had received compensation in connection with their claim. Therefore, the DEC did not find clear and convincing evidence that respondent exhibited gross negligence or a pattern of negligence in the handling of the matter or that he failed to act with reasonable diligence and promptness.

The DEC found sufficient proof, however, that respondent did not keep Irving reasonably informed about the status of the case. The DEC also found that respondent failed to provide Fry with information in connection with the case and to turn over the Gutin file to Fry. The DEC believed that respondent's action was a violation of RPC 1.16 [presumably (d)] (failure to surrender papers and property to which a client is entitled). However, since that charge was not cited in the complaint, the DEC refrained from making such a finding.

The DEC did not find clear and convincing evidence of a violation of RPC 1.15(a) or (d). Respondent was charged with failure to safeguard the Gutins' property, that is, the retainer, in a separate account from his own funds. The DEC noted that respondent deposited the \$500 retainer into his business account. The DEC was satisfied that the retainer agreement between Irving and Edith indicated clearly that the \$500 retainer was to be a "minimum" fee for respondent's services. Exhibit R-20. Based on the language in the retainer ("you agreed to pay a minimum of \$500 for legal services regardless of the amount of time actually spent on this case"), the DEC found that respondent did not commingle his and his clients' funds. The DEC remarked that respondent was entitled to deposit the retainer into his business account and that his client, an intelligent individual, should have understood the propriety of such action.

As to the charges relating to Matthew and Iris, the same as in the Irving Gutin complaint, the DEC was not convinced that an attorney/client relationship existed between respondent and Matthew and Iris. The DEC found that any fees given to respondent were

paid by the elder Gutins to represent them in connection with their answer and counterclaim. The answer and counterclaim filed by respondent was prepared in behalf of Irving and Edith only. Exhibit C-44. The DEC found that, despite the letters in evidence relating to Matthew and Iris, respondent's actions were an outgrowth of his representation of Irving. The DEC did not believe that the documents in evidence established an attorney/client relationship between Matthew and Iris and respondent. A significant factor in that determination was the absence of a signed retainer agreement between respondent and Matthew and Iris. The DEC further found that, if respondent had intended to establish an attorney/client relationship with Matthew and Iris, he would have had them sign a retainer agreement, just as he had with Irving. The DEC was, thus, convinced that respondent was attempting to do a favor for Matthew and Iris by writing several letters in their behalf and was willing to help them out by giving them some direction, largely as a favor to Irving. Hence, the DEC did not find that respondent had violated any of the rules cited in connection with the Iris and Matthew Gutin grievance. The DEC concluded, however, that respondent had violated RPC 8.1(b) in both of the Gutin matters.

Count five - Ronald D. Franke - (District Docket No. IV-94-06E)

Ronald Franke was involved in SHF Associates, a partnership comprised of Franke and two others, Mark Sandler and Michael Hatrak. The partnership was formed for the purpose of a real estate investment in Burlington County. At some point, the partnership

began experiencing financial difficulties. The property became the subject of a mortgage foreclosure action in the Burlington County Superior Court. While the testimony in this matter was confusing, it appears that Hatrak became dissatisfied with the partnership and renegotiated a new mortgage on the property without the other two partners' knowledge or consent, in violation of the partnership agreement. A lawsuit ensued in the Chancery Division. Respondent entered his appearance on behalf of SHF Associates and two partners, Mark Sandler and Ronald Franke. Hatrak was represented by Scott Pyfer, Esq.

At some point in the litigation, a motion was filed and heard on May 25, 1993 and another on June 1, 1993. The transcript of the June 1 proceeding, Exhibit C-17, shows that there was an attempt to resolve the dispute. The court required the parties to exchange certain information through counsel. Specifically, Franke was to provide an accounting and information regarding a potential investor he had found. The purpose of exchanging the information was to determine whether an attempt to restructure the ownership among Franke and Hatrak and a third investor, known only to Franke, was feasible.

Franke testified that, although he tried to contact respondent on twelve occasions to give him the information ordered by the court, he was unable to get through to respondent. It was Franke's understanding that he had thirty days from the hearing to submit the information to Hatrak's counsel as well as to the judge. Thereafter Pyfer was to memorialize the restructuring of the deal.

When Franke was unable to contact respondent, he wrote to the court on June 21,

1993 and again on November 11, 1993, specifically noting respondent's lack of responsiveness and his inaction in connection with the representations he had made to the court.

At the DEC hearing, Franke claimed that, because of respondent's inaction, the property was the subject of a foreclosure. A sheriff's sale was scheduled for November 18, 1993. Eventually Franke was required to file for bankruptcy in July 1994.

For his part, respondent asserted that he was not Franke's attorney and that Franke was appearing pro se. Respondent conceded, however, that he represented the partnership of which Sandler and Franke were partners. Franke, too, admitted that he was appearing pro se, although it is not clear from the record when that occurred. For example, in Franke's first letter to the court, in June 1993, he referred to respondent as his attorney. In the November 1993 letter, however, he called respondent the "partnership's attorney." At some point, Franke could no longer afford legal counsel.

Respondent claimed that he attempted to return Franke's calls, but was unable to reach him. Eventually, after Franke wrote to the court, respondent contacted Franke to determine whether he still had an interested investor for the restructuring of the deal.

At no time did respondent request more time to submit the information ordered by the court.

The DEC sent letters seeking a reply to the grievance in this matter on December 2, December 14, and February 7, 1994. Respondent did not reply to the DEC's letters.

Respondent was charged with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, and

RPC 1.4. Although the complaint did not specifically cite a violation of RPC 8.1(b), it alleged that respondent failed to reply to requests for information from the DEC.

The DEC discounted respondent's claim that he was not representing Franke. Moreover, the DEC found that the lack of documentation in respondent's file underscored his failure to take any action in connection with a settlement after the court appearance on June 1, 1993. The DEC believed that respondent's file should have contained some documentation in the form of either correspondence to Franke or to Pyfer explaining any problems that might have arisen during the course of his attempts to resolve the matter. The DEC noted that there was not even a letter to Franke advising him of what he was required to do to attempt to settle the matter. The DEC also noted that, if respondent was aware that Franke was not doing certain things, respondent should have sent follow-up letters to Franke warning him of the possible adverse consequences of failing to comply with the court's direction.

The DEC believed that it was not its place to determine whether respondent's failure to take any action in connection with the matter after the June 1, 1993 court appearance resulted in the foreclosure on the property. The DEC was convinced, however, that respondent failed to take any action, contrary to the court's order. The DEC found clear and convincing evidence of gross neglect, a pattern of negligence, failure to act with reasonable diligence, failure to keep the client informed about the status of the matter and failure to comply with reasonable requests for information from a disciplinary authority.

Third complaint

Bonnie Moran (McNamara) - (District Docket No. IV-94-053E)

In June 1992 respondent was retained by John Moran to represent him in connection with a matrimonial matter against Bonnie Moran, now Bonnie McNamara, the grievant in this matter. The divorce matter was extremely acrimonious.

At the time respondent was retained, Moran was the sole owner of a corporation known as Moran General Contractors, a Delaware corporation. McNamara was the sole owner of a second corporation, Moran General Construction, also a Delaware corporation. Moran had also retained respondent to represent him in connection with his corporation.

In 1992 McNamara filed a suit to stop Moran from using the corporate name of Moran General Contractors, alleging that the name was deceptively similar and was creating confusion. As a result of the litigation, the Court of Common Pleas in Delaware County, Pennsylvania, issued an order in July 1992, directing, among other things, that Moran "cease conducting any business under the name 'Moran General Contractors,' 'Moran General Contractors, Inc.' or any other name which is or may be deceptively similar to 'Moran General Construction Company.'" The order further enjoined respondent from misrepresenting to third persons that he was an officer, owner or employee of Moran General Construction Company and from using the name "Moran General Contractors" or any similar name.

The order also directed Moran to immediately terminate and relinquish any post office boxes in the name of Moran General Construction, Moran General Contractors,

Moran General Contractors, Inc. and/or John F. Moran, and to cancel any forwarding orders in effect in any branch of the United States Postal Service.

A copy of the court's order was served on respondent on August 14, 1992 by McNamara's attorney. The certificate of service, dated August 14, indicated that service of process had been made by hand-delivery.

Notwithstanding the court's order, on September 17, 1992 respondent prepared, in behalf of John F. Moran, a certificate of incorporation for Moran General Contractors, Inc. The certificate was filed with the Secretary of State of New Jersey on September 17, 1992. Respondent was listed in that document as the registered agent of the corporation. The certificate of incorporation also listed Moran's address as the post office box that Moran had been ordered to stop using, pursuant to the court's direction.

Early in 1993 another dispute arose between Moran and McNamara. Apparently there was some litigation in New Jersey as well. In February 1993, the New Jersey court issued an order that reversed in part the Pennsylvania ruling.

Before the Pennsylvania order, in June 1992 McNamara, in behalf of Moran General Construction, had entered into a contract with L.C. McCrae, Company ("McCrae"), to establish a joint venture in the construction of the Bellmawr Post Office. On February 5, 1993, a New Jersey court entered an order permitting Moran "to re-enter the premises of the family business" The order further permitted Moran to assume all of the business operations, including the "making of bids, signing of contracts, performance of contracts, hiring, firing and all other tasks necessary to operate the

business." The order further required McNamara to return all property and records of the business to the Chester, Pennsylvania office. Thereafter, respondent drafted a complaint on behalf of Moran against McCrae. The complaint was filed in or about August 1993. In the first count, the plaintiff, Moran General Construction Company, was listed as a New Jersey corporation.

After the grievance in this matter was filed, the DEC sent respondent three letters requesting a reply. The letters were dated September 23, 1994, October 11, and December 22, 1994. Respondent failed to reply to any of the DEC's requests for information.

The DEC found that, notwithstanding the 1993 New Jersey court order reversing the Pennsylvania order, when respondent formed the New Jersey corporation with a name identical to that prohibited by the Pennsylvania court order he assisted his client in conduct known to be illegal, criminal or fraudulent, in violation of RPC 1.2(d).

The DEC also found that respondent's action in preparing and filing the certificate of incorporation was conduct involving deceit or misrepresentation, as respondent was aware that Moran was not authorized to use either the name or post office box listed in the certificate of incorporation. The DEC also found that respondent violated RPC 8.4(d), in that he deliberately disregarded the Pennsylvania court order in a manner designed to interfere with the administration of justice.

As to the charge that respondent violated RPC 8.4(c) and RPC 8.4(d)(count two), the DEC did not find clear and convincing evidence of a violation. The ethics complaint

alleged that respondent filed a lawsuit on behalf of Moran against McCrae, that in August 1993 respondent prepared, signed and filed a complaint in New Jersey alleging that Moran General Construction Company was a New Jersey corporation and that the defendant, McCrae, had entered into an agreement to operate the joint venture with the Moran General Construction Company. The ethics complaint charged that, at the time the agreement with McCrae was entered, there was no New Jersey corporation titled Moran General Construction Company; it was not until three months later, September 17, 1992, that a corporation with that name was formed in New Jersey. The ethics complaint, thus, alleged that respondent deliberately made misrepresentations in the civil complaint.

The DEC reviewed the civil complaint drafted by respondent and found that the plaintiff, Moran General Construction Company and the defendant, McCrae, bid on a contract to be performed with United States Postal Service at Bellmawr as a joint venture. The civil complaint, however, did not state that, at the time that the joint venture was entered, the plaintiff was a New Jersey corporation. The first paragraph in the civil complaint against McCrae stated that, at the time of the filing of the complaint, Moran General Construction Company was a New Jersey corporation with offices in Williamstown, New Jersey, and Chester, Pennsylvania. As to this charge, the DEC found that respondent did not prepare the civil complaint with the intent to deceive the court or other parties. The DEC believed that the complaint had been inartfully drafted. The DEC noted that, when respondent filed the civil complaint, August 1993, Moran General Construction Company had been formed as a New Jersey corporation, pursuant to the

certificate of incorporation filed in September 1992. Hence, the DEC reasoned, it could not be found that respondent deliberately attempted to mislead the court about the status of Moran General Construction Company. The DEC found, however, that respondent's failure to reply to the DEC's request for information was a violation of RPC 8.1(b).

Fourth Complaint

Valerie Ferrell (District Docket No. IV-95-008E)

Although Valerie Ferrell failed to appear at the DEC hearing, respondent admitted the essential allegations of the complaint. The complaint alleged that Valerie Ferrell had retained respondent in January 1993 to represent her in connection with a workers' compensation claim. Respondent filed a workers' compensation petition in Valerie's behalf on May 29, 1990. Thereafter, he amended the petition on October 24, 1991. Initially, he communicated with Valerie on a regular basis by sending her letters and keeping her apprised of court appearances and postponements. However, at some point in early to mid-1992, respondent ceased to communicate with Valerie. She began calling his office to no avail. She also sent a certified letter to respondent requesting information about the status of the case. Respondent failed to reply to that letter.

On December 20, 1994, Valerie went to respondent's office without an appointment and refused to leave until respondent met with her. During the course of their meeting, respondent explained to Valerie that her case had been dismissed due to his failure to appear in court and to notify her that her appearance in court was necessary. Valerie's

claim had been dismissed for lack of prosecution due to the lack of an appearance on March 3, 1993.

Respondent also failed to reply to a number of requests from the DEC seeking a reply to Valerie's grievance. The letters were dated December 30, 1994, January 30, February 13 and February 16, 1995.

The DEC found that respondent's conduct was grossly negligent and that he failed to act with reasonable diligence, failed to keep his client reasonably informed as to the status of the matter and failed to cooperate with the disciplinary authorities.

* * *

All in all, the DEC found that the violations in connection with respondent's representation of clients and with his conduct toward the ethics system were repetitive and serious. The DEC found that the effect of respondent's misconduct on his clients was extremely harmful. The DEC cited, for example, Valerie Ferrel's loss of her workers' compensation claim. The DEC found that the number of violations committed by respondent warranted severe discipline. The DEC recommended that, at a minimum, a two-year consecutive suspension be imposed. The DEC stressed the need to send a strong message to respondent, as well as to the bar, that lawyers must comply with their obligation to cooperate with the ethics committee in their investigations of grievances. The DEC noted that, had respondent cooperated, a number of the complaints could have been relatively easily resolved, thereby saving the DEC much time both at the investigation and at the hearing stages. Moreover, the DEC remarked, a number of

individuals, clients and non-clients, would not have been required to attend the DEC hearings. The DEC concluded that respondent's failure to cooperate with the DEC, standing alone, warranted severe discipline. The DEC also recommended that, prior to reinstatement, respondent be required to submit proof of fitness to practice law. The DEC based this requirement on opening remarks of respondent's counsel alleging that respondent was suffering from depression and periodically visited a doctor for treatment. The DEC pointed out, however, that no documentation was presented during the course of the hearing to substantiate respondent's participation in any sort of counseling.

In sum, the DEC found the following violations:

In ten of the eleven matters, excluding only the Berg matter, the DEC found that respondent failed to cooperate with the DEC [RPC 8.1(b)]. The DEC found gross negligence [(RPC 1.1(a)) in three matters: Logan , Franke, and Ferrell; lack of diligence (RPC 1.3) in four matters: Logan, Bramble, Franke and Ferrell; failure to communicate (RPC 1.4) in three matters: Gutin, Franke and Ferrell; failure to disclose to a tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure [(RPC 3.3(a)(5))] and violation of the duties under section (a) [(RPC 3.3 (b))] in Berg; knowingly disobeying an obligation under the rules of a tribunal [(RPC 3.4 (c))] in two matters: Logan and Franke; counseling or assisting a client in conduct the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law [(RPC 1.2(d)) in Moran; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation [(RPC 8.4(c)) in

Moran; and engaging in conduct prejudicial to the administration of justice [(RPC 8.4 (d)] in Moran.

* * *

Following a de novo review of the record, the Board was satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence. The Board disagreed, however, with some of the DEC findings. The Board was unable to find a violation of RPC 3.4(c) (failure to comply with an order of the court) in the Logan matter because Logan's taxes were paid, although not in a timely fashion and because Logan's attorney gave respondent no direction as to the disposition of Adam's tax refund. Similarly, in the Matthew and Iris Gutin matter, the DEC did not find the existence of an attorney/client relationship because of the absence of a retainer agreement. However, the evidence shows that respondent did, in fact, provide services to the Gutins in connection with their insurance claim, at least before a complaint was filed against them. Moreover, Matthew testified that, in the past, when respondent had represented him in several matters, his father had paid the legal fee. The Gutins all claimed that Irving was to pay the fee for the representation of both families. The Board, therefore, concluded that Iris and Matthew reasonably believed that respondent was acting as their attorney in their lawsuit and counterclaim. Respondent's conduct as to Iris and Matthew was, therefore, also a violation of RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate).

Generally, a finding of a violation of RPC 1.1(b) is limited to multiple cases of neglect. While it is not appropriate to find such a violation in Franke alone, as did the DEC, respondent's conduct throughout the matters covered by the four complaints did, nonetheless, establish a pattern of neglect. The Board could not agree, however, with the DEC's conclusion that respondent's conduct in Franke gave rise to a finding of gross neglect [RPC 1.1(a)].

As to the DEC's findings of violations of RPC 1.2 (d) and RPC 8.4(d) in Moran, the Board determined that respondent's drafting of the certificate of incorporation was instead a violation of RPC 8.4(c).

Respondent gave no satisfactory explanation for his conduct in these eleven matters. While his counsel mentioned that respondent was suffering from depression, there was nothing presented to the DEC to substantiate this claim. Respondent's counsel first attempted to submit such evidence when he filed his brief with the Board. Respondent appended to that brief a doctor's letter, which was hearsay evidence. The doctor was not made available for cross-examination and the presenter did not have an opportunity to rebut the contents of the letter. Moreover, the letter has no probative value. The doctor did not claim that there was a causal link between respondent's "major depressive disorder" and his conduct in the eleven matters. The doctor explained that the symptoms of this disorder include: "disturbed sleeping patterns (including waking up at night for 2 or 3 hours accompanied by severe rumination)", decreased libido, increased appetite and weight gain. It is noted that respondent did not begin treatment with this doctor until

October 9, 1994, one and one-half weeks before respondent's hearing in his first case, Docket No. DRB 94-222.

There remains the issue of appropriate discipline. In In re Kanter, N.J. (1997), the Court imposed a two-year suspension for misconduct in eleven ethics matters, including violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to communicate); RPC 1.16(d) (failure to deliver files); RPC 3.2 (failure to expedite litigation); and RPC 8.1(b) (failure to cooperate with disciplinary authorities). See also In re Depietropolo, 127 N.J. 237 (1992) (two-year suspension for pattern of neglect in five matters, misrepresentation, failure to communicate and failure to cooperate with disciplinary authorities).

Respondent's multiple ethics offenses were grievous and caused serious harm to his clients. Nevertheless, he has not practiced law for two years, since his July 31, 1995 three-month suspension. In light of the foregoing, a seven-member majority of the Board determined to impose a two-year suspension retroactive to October 31, 1995. Two members agreed that respondent's conduct warrants severe discipline. Swayed, however, by the unique circumstances of this case, that is, by respondent's willingness to continue to remain suspended from the practice of law even after he was eligible to apply for reinstatement, those two members believe that a three-month prospective suspension is sufficient discipline for this respondent's ethics infractions.

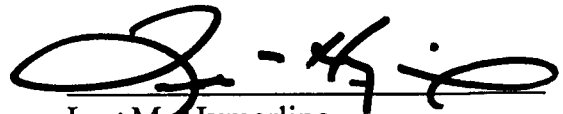
In addition, the Board unanimously determined to require respondent to submit, prior to reinstatement, medical proof of fitness to practice law. The report shall be issued by

a doctor approved by the Office of Attorney Ethics ("OAE"). Following his restoration, respondent shall be supervised for three years by a proctor approved by the OAE. The Board also voted to require respondent to present proof of completion of twelve hours of professional responsibility courses, to be taken within the first six months of his reinstatement.

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

Dated:

10/15/97



Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Neil Sternstein
Docket No. DRB 97-106**

Argued: July 17, 1996

Decided: October 15, 1997

Disposition: Two-Year Suspension

Members	Disbar	Two-Year Suspension (retroactive)	Three- Month Suspension (prospective)	Reprimand	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole			x				
Lolla		x					
Maudsley		x					
Peterson			x				
Schwartz		x					
Thompson		x					
Total:		7	9				

Robyn M. Hill 10/27/97
Robyn M. Hill
Chief Counsel