SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 94-388 and DRB 95-164

IN THE MATTER OF	
STEVEN E. POLLAN,	
AN ATTORNEY AT LAW	

Decision of the
Disciplinary Review Board

Argued: December 21, 1994 (DRB 94-388) and
June 21, 1995 (DRB 95-164)

Decided: October 2, 1995

Raymond A. Reddin and William Higgins, Sr. appeared on behalf of the District XI Ethics Committee (DRB 94-388).

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics and Kenneth J. Cesta appeared on behalf of the District VB Ethics Committee (DRB 95-164).

John F.X. Irving appeared on behalf of respondent in both matters.

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

This disciplinary matter arose from two separate complaints (DRB 94-388) argued on December 21, 1994 and four separate complaints (DRB 95-164) argued on June 21, 1995. The decision in DRB 94-388 was held pending oral argument on the matter under DRB 95-164. The matters are discussed below separately.

Docket No. DRB 94-388 (XI-92-11E, XI-92-16E and XI-92-05E)

In two of the matters reviewed by the DEC and docketed by the Board as DRB 94-388 (District Docket Nos. XI-92-11E and XI-92-16E), respondent was charged with violations of RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to communicate with a client); RPC 1.15(b) (safekeeping property); RPC 1.16(d) (failure to surrender file); and RPC 3.2 (failure to expedite litigation). Two other matters were withdrawn by the presenter during the first day of hearing and referred to the Office of Attorney Ethics ("OAE"). The second complaint (Docket No. XI-92-05E) charged respondent with violations of RPC 1.4 "et al."

Docket No. DRB 95-164 (XIV-92-084E, VB-93-37E, VB-93-4E and VB-94-14E)

The first complaint, (Docket No. XIV-92-084E), charged respondent with violations of RPC 1.1(a)(gross negligence); RPC 1.3; RPC 1.4(a); RPC 8.1(b) (failure to reply to a lawful demand for information in a disciplinary proceeding); RPC 8.4(c) (misrepresentation); RPC 1.15; R.1:21-6 (recordkeeping violations); and the principles enunciated in In re Chidiac, 120 N.J. 32 (1990). These charges related to respondent's conduct in the administration of an estate. This matter was originally a part of Docket No. DRB 94-388, but, as noted above, was withdrawn by the presenter at the DEC hearing and referred to the OAE.

In a second complaint, (Docket VB-93-37E), respondent was charged with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC

8.4(a) (attempting to violate the rules of professional conduct), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). These charges stemmed from respondent's failure to timely file a petition for certification to the New Jersey Supreme Court and failure to keep the client reasonably informed of the status of the matter.

In a third complaint, (Docket No. VB-93-4E), respondent was charged with violations of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 8.4(a) and RPC 8.4(d). These charges arose from respondent's failure to institute a lawsuit or settle claims on behalf of a client who had sustained personal injuries in an automobile accident.

The fourth complaint, (Docket VB-94-14E), charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 8.4(a) and RPC 1.1(b). These charges resulted from respondent's failure to file a complaint in a wrongful death matter.

Respondent was admitted to the New Jersey bar in 1970. He currently maintains a law office in Maplewood, New Jersey. Respondent has no prior ethics history.

Docket No. DRB 94-388

A. The Wolak Matter (XI-92-11E)

Walter Wolak retained respondent in November 1986 to handle a workers' compensation matter arising from an injury to his wrist that occurred while at work. At some undetermined point, respondent filed a complaint in Wolak's behalf. He then apparently sent Wolak to be examined by a doctor for insurance purposes.

Afterwards, Wolak did not hear from respondent. Wolak's wife called respondent on numerous occasions in an attempt to determine the status of Wolak's worker's compensation claim. Respondent failed to return any of those calls.

In January 1989, respondent wrote to Wolak, suggesting that he retain another attorney because either Wolak or his wife had contacted the DEC and because Wolak's wife had caused "disruption" in respondent's office and had been "extremely abusive" to respondent and his staff. Exhibit P-23 to DRB 94-388. Wolak testified that he called respondent's secretary and apologized for his wife's behavior. By letters dated February and April 1989, respondent notified Wolak of appointments with doctors regarding the claim. 1T45-47.[1] Respondent justified this assistance after termination of his representation as "performing additional services until [Wolak] found a new attorney." Exhibit P-20 to DRB 94-388.

Wolak's case was dismissed for lack of prosecution. The record does not disclose the date of the dismissal or contain a copy of the order of dismissal. The record is also devoid of any explanation as to what actions, if any, respondent took between his April 1989 letter and February 1991.

Wolak retained new counsel, James Jude Plaia, Esq., who requested the file from respondent by letters dated February 20, July 23, August 13 and December 6, 1991, to no avail. Exhibits P1-

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[1] 1T refers to the transcript of the DEC hearing on July 29, 1994 for DRB 94-388.

P4 to DRB 94-388. The letters also referenced numerous unanswered telephone calls to respondent. Plaia sought respondent's file in order to vacate the dismissal of Wolak's claim and to proceed with the matter. Respondent conceded that he should have turned over the file to Plaia. 1T63.

B. The Rosa Matter (XI-92-16E)

Maria Rosa retained respondent early in 1986 to represent her children, Anthony and Marylin, in a personal injury matter arising from a December 30, 1985 automobile accident. She gave respondent a police report from the accident. According to respondent, the report did not indicate that Marylin was involved in the accident, which he described as a "dart-out" case. Anthony apparently ran out into the street from between two cars and was struck by a vehicle. Ms. Rosa also provided respondent with a medical report from Urban Health Plan, Inc. Respondent contended that the reports stated that Anthony was examined on March 6 and March 14, 1986, two and one-half months after the alleged accident. The diagnosis was subdural hematoma. Respondent claimed that he attempted to obtain further information from the doctor involved, unsuccessfully. Similarly, a local doctor who examined Anthony at respondent's request was unable to obtain any further information from the first doctor. Exhibits P-21 and P-22 to DRB 94-388. 1T67-68, 77, 83.

Sometime after March 1986, respondent met three or four times with the two children. He did not observe any scars on the children or other signs of injury and, therefore, had reservations

about pursuing the matter. Respondent concluded that the original medical diagnosis was inconsistent with Anthony's appearance. The record does not reveal that respondent took any action in the matter between 1986 and 1991. The record likewise fails to disclose whether respondent communicated to Ms. Rosa his misgivings in pursuing the matter.

In June 1991, Ms. Rosa met with Stephen M. Sammarro, Esq., about proceeding with the matter. The statute of limitations had not yet run, because the children were minors. 1T68-69, 74. Sammarro wrote to respondent three times in 1991 and again on January 23, 1992 to request the file. Exhibits P-6 through P-9 to DRB 94-388. Respondent failed to reply to Sammarro's letters or numerous telephone calls. 1T70-72. Thereafter, Sammarro filed a grievance against respondent in 1992.

In June 1994, Sammarro's former employer, Joseph Weiner, filed a lawsuit, presumably in behalf of one or both children. The presenter stated that Weiner still had not received respondent's file at the time of the first DEC hearing, three years after the initial request. 1T73-74. The DEC hearing was continued and, at the second hearing, the presenter offered into evidence a letter dated July 28, 1994, in which respondent represented that he had recently forwarded the file to Weiner. 2T9[2], Exhibit P-20 to DRB 94-388.

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[2] 2T refers to the transcript of the DEC hearing on August 4, 1994 for DRB 94-388.

C. The Montoya Matter (XI-92-05E)

Julia Montoya retained respondent shortly after she fell on public school grounds on October 1, 1987. Montoya and her husband accompanied respondent to the site to determine the ground conditions. 1T86-88. Later, respondent called Montoya several times to answer "questionnaires" — presumably answers to interrogatories. Occasionally, she spoke in Spanish with a bilingual secretary at respondent's office. Montoya went to respondent's office "often" to ask about the progress of her case. Apparently respondent informed her that he was "in touch with" the insurance companies. When respondent offered Montoya $1,500 to settle the case, she rejected the offer. Montoya wanted to collect $5,000 to cover medical bills of $2,000 to $3,000 and she wanted "something left over" for herself. After that meeting, Montoya was unable to reach respondent by telephone or in person. At an undisclosed point, Montoya retained another attorney, Ronald Simon. 1T86-91.

Montoya filed a grievance against respondent on December 12, 1991. 1T92, Exhibit P-10 to DRB 94-388. Her attorney at the time of the DEC hearing, Raymond A. Redden, advised her prior to that hearing that her case had been dismissed with prejudice on July 23, 1990, upon motion of the defendant. 1T92-95, Exhibit P-11 to DRB 94-388. The record does not explain why Montoya had again changed attorneys or the current status of the case.

In contrast, respondent contended that he had advised Montoya "on numerous occasions" that he would not continue to handle her

case because he viewed the $1,500 settlement as reasonable for "nuisance value." Respondent conceded that he did not write any letters to that effect. 1T106-108, 114-118. Respondent added that he was concerned about the viability of Montoya's claim, because she had identified three different locations on the school yard as the site of her fall and because he viewed her medical reports as weak. 1T104-107, 112-113, Exhibits P-12 through 16 to DRB 94-388.

* * *

The DEC did not distinguish its findings among the three cases, but found clear and convincing evidence that respondent violated RPC 1.1(a) (gross neglect - though not charged in the complaints); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to keep clients reasonably informed as to the status of their cases); and RPC 1.16 (failure to turn over client's file) (citing the Rosa matter as "one of the most glaring violations"). Respondent was not charged with violations of RPC 1.1 or RPC 1.3 in Montoya. Nor was a violation of RPC 1.4 charged in Rosa.

The DEC made no mention as to any conclusions on alleged violations of RPC 3.2 (failure to expedite litigation) in the Wolak and Rosa matters.

DOCKET NO. DRB 95-164

A. The Scott Matter (XIV-92-084E)

Respondent was the executor of the estate of Meyer Scott, who died on February 25, 1985, leaving his son Richard Z. Scott (Scott) as the sole beneficiary of his estate. After his father's death, Scott became depressed and, as a result, lost his job. He received, however, monthly distributions from a trust created under his father's will, as well as social security checks. In accordance with the will, Scott was to receive $350 per week, if employed, or $450 per week, if unemployed.

Meyer Scott's will named respondent as the trustee of the trust created for the sole benefit of Scott. The will did not specify the dates when the payments were due. Initially, Scott received $1,400 per month. The payments were later increased to $1,800 per month. Respondent, however, never sent the checks to Scott on the same date. Scott would call respondent every three weeks to find out when he would be receiving his check. Scott claimed that most of the times he called, respondent was unavailable for various reasons. Scott wanted his trust fund checks on the third of the month, the same day he received his social security checks. He, nevertheless, needed the checks by the tenth of the month so he could pay the rent on two apartments he maintained, without having to pay late charges. He continued to keep his father's apartment and spent time there during the day so he would not feel so alone. Because respondent did not comply with Scott's request, Scott incurred late charges each month.

Respondent advised Scott that he needed to learn to manage his money better so that he would not incur the charges.

Scott testified that he believed that his father's estate had a value of approximately $120,000 at the time of his father's death. The estate was comprised of bonds, mutual funds, United States Treasury notes, and cash. Scott claimed that, from 1987, two years after his father's death, until 1992, when he called the New Jersey State Bar Association for assistance, he periodically requested an accounting from respondent. Respondent never gave Scott an accounting, even though respondent repeatedly told him he was working on it. 3T20.[3] Scott testified that, prior to his father's death, his father had advised him to obtain monthly statements from respondent so he would know how much money was going in and out of the estate. Respondent, however, claimed that, shortly after Scott's father's death, he, respondent, had given Scott a summary of the contents of the estate. Respondent further claimed that Scott would periodically inquire as to what remained in the estate and respondent would so advise him verbally. 5T72.[4] Respondent denied that Scott ever asked him for a formal accounting of the estate assets.

Scott testified that initially he received his monthly distributions from a trust account fund at Shearson-Lehman Brothers, Inc. However, respondent would, on occasion, provide

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[3] 3T denotes the transcript of the DEC hearing on September 22, 1994, commencing at 1:15 p.m. for DRB 95-164.

[4] 5T denotes the transcript of the DEC hearing on October 20, 1994 for DRB 95-164.

Scott with a personal check, rather than a check from the trust fund. Scott testified that, as time progressed, he received more and more personal checks instead of trust fund checks, until he received almost all personal checks. 3T20.

Respondent explained that the reason for paying Scott with personal checks was to avoid selling off stocks from the estate at a time when it would be disadvantageous to do so. Thereafter, respondent would reimburse himself for the payments to Scott from the estate. Respondent's claim was, however, put into question by Scott's testimony. Scott claimed that, after repeated efforts to contact respondent to determine the status of the Shearson-Lehman account, Scott was required to call the brokerage firm directly. His broker apparently advised him to call respondent because he too was unable to get in touch with respondent. The broker was powerless to change any investments without respondent's approval and was unable to contact respondent to obtain the approval. 3T34.

By letter dated May 14, 1992 (Exhibit C-22 to DRB 95-164), respondent enclosed a check in the sum of $1,800 and explained to Scott that it was the final check from his father's estate. A small amount of money remained in the estate, which respondent was keeping in reserve for fees for the accountant and taxes that might be due. Scott testified that he was shocked when he received the final check because he was unaware that the estate had been depleted. 3T27. Respondent testified, however, that Scott had been made aware, at least six months earlier, that the estate would be depleted. 5T77. Scott claimed that, had he known that the

estate's assets were dwindling, he would not have maintained both of the apartments.

Prior to that, in January 1990, when Scott went to his broker directly, he was informed that $50,000 from the trust had been mailed to respondent. Scott testified that, when he questioned respondent with regard to the withdrawal, respondent replied that he had "pulled all the money from Shearson-Lehman . . . ." When Scott inquired of respondent what he had done with the money, respondent told him, "don't worry, it's in a good place." Respondent added that he disapproved of the manner in which Shearson-Lehman was investing the funds. 3T48.

OAE investigative auditor D.K. Tulloch testified that there was a checking account for the estate. Respondent, however, had explained to Tulloch, during an OAE demand audit, that many of the disbursements came from respondent's own business account, of which he had three or four. 3T82. Respondent also claimed that many times he paid Scott from his own funds so that he would not have to sell off estate assets at an unfavorable time and that he would later reimburse himself from the estate. It was unclear from the transcript whether respondent was referring to payments to Scott from his business account, from his personal funds or from both.

Tulloch testified that the OAE sent respondent a demand audit letter dated May 8, 1992. Exhibit C-23 to DRB 95-164. The letter required respondent to appear at the OAE with his attorney trust and business records from 1991 to 1992, together with information regarding the Scott matter and several other pending grievances.

Respondent did not appear, but received an extension until June 8, 1992.

At the June 8, 1992 audit, respondent failed to bring all of the requested documents. He brought some documents regarding his attorney trust account and very few documents on the Scott estate. Respondent did not bring a list of the estate assets, claiming that he had provided all of the records to his accountant, Walter Pagano, CPA. 3T65.

Respondent further claimed that he used the Quicken System to perform a three-way reconciliation of his attorney trust account. He contended that each month was cleared from the program by the most current month's reconciliation. Respondent also maintained that he failed to print out and keep each month's reconciliation.

Similar to Scott's experience, Tulloch testified that, even though he called respondent six to eight times between June 15 and August 1992, he only received one call back from respondent. Tulloch, however, was out of the office at the time. 3T72.

In a letter dated July 17, 1992 to the OAE, respondent asserted that his accountant was working on the Scott documents and that he hoped to forward all the documents within a two-week period. Exhibit C-24 to DRB 95-164. However, when Tulloch later contacted the accountant, he was told that the documents had not been forwarded to the accountant. 3T94. Tulloch was, therefore, required to reconstruct the estate by obtaining available documents from Shearson-Lehman and respondent's bank.

In the interim, the OAE scheduled a continuation of the demand audit on September 10, 1992. Respondent, however, requested another postponement until September 28, 1992. Once more, respondent did not appear; this time he did not request an adjournment. Respondent eventually appeared on October 1, 1992 with some records but, again, not those requested by the OAE. Respondent agreed to produce the records on October 5, 1992. The OAE still sought records that established the assets of the estate as of the decedent's date of death as well as documents showing how the funds were disbursed. Respondent had only provided the OAE with a document consisting of cash receipts, a disbursements journal for the Scott estate checking account and an "oral" description of the assets of the estate. 3T78-9.

In November 1992, the OAE sent respondent another letter, requesting additional documentation. On January 25, 1993, respondent submitted additional records and a three-page analysis from his accountant. The document, however, lacked information describing the source of the funds, the value of the estate in February 1985 or the amount of appreciation of the estate. Tulloch was, therefore, unable to calculate the amount available to be disbursed. In the analysis, disbursements that were listed by respondent were not documented. Some disbursements were supported by copies of checks. In many instances, there was only a statement from respondent that he had spent a certain amount for a particular expense.

Tulloch had a difficult time reconstructing the estate because respondent used several checking accounts, including one for the estate and three or four different business checking accounts, that he also used for the estate. 3T82. Thus, specific items were not supported as to the validity of the expenses and documents to trace possible transfers from one account to the other were missing.

Respondent's explanation of the value of the estate at the beginning of the audit far exceeded the amount of disbursements. Because of the OAE's difficulty in obtaining respondent's records, Tulloch believed that there was an appearance that "something [was] radically wrong with the handling of funds." 3T83.

Tulloch was unable to reconstruct the estate from the documents that respondent had produced. As noted above, he had to obtain records from Shearson-Lehman and the bank. The bank copies, however, did not go back as far as the date of Meyer Scott's death. From the records received, Tulloch concluded that all but approximately $335 of the estate funds had been disbursed and, "on their face," the disbursements appeared to be legitimate, even though a number of alleged disbursements were completely unsupported. 3T91. Tulloch valued the estate at approximately $168,000. 3T105.

Tulloch waited until May 1993 to ask for documents from alternate sources. Until then, respondent had promised to supply the necessary documents.

Tulloch testified that respondent failed to maintain a client ledger card for the estate; handled estate transactions through his

attorney business account; failed to keep a record of receipts and disbursements for the estate checking account; failed to perform quarterly reconciliations of funds; failed to retain deposit slips; and held onto checks from the brokerage account for extremely long periods before depositing them.

At the initial demand audit, respondent claimed that he was not required to file an inheritance tax return with the New Jersey Division on Taxation. Respondent, however, received a bill for $27,882.19 (Exhibit C-20 to DRB 95-164). Respondent received three such notices. Despite these notices, respondent maintained that he had paid the bill, but had not filed a return.

Respondent blamed his inability to produce the documents requested by the OAE on the fact that he had moved his office several times and that the documents may have been buried in boxes somewhere. He also claimed that he learned that his "former" secretary had been discharged from her job for hiding files and opined that perhaps that was what had become of some of his documents. Respondent also blamed his problems with replying to disciplinary authorities on his bouts of depression for the last decade and his use of anti-depressants.

B. The Naclario Matter (VB-93-37E)

The grievant in this matter, Edward Koppelson, Esq., was retained by Joseph Naclario, after Naclario was unable to obtain proper legal representation from respondent.

Naclario had retained respondent in August 1992 to petition the New Jersey Supreme Court for certification from a judgment of the appellate division rendered in July 1992. Naclario paid respondent a $1,500 retainer to have a DWI conviction overturned.

Respondent apparently filed a Notice of Petition for Certification, dated August 12, 1992, but failed to take any further action in the matter. Apparently, in December 1992, Naclario learned that his petition had been dismissed for lack of prosecution, when local authorities demanded that he turn in his driver's license. Naclario made numerous telephone calls to respondent and wrote to him on several occasions without receiving any response.

Finally, Naclario retained grievant. Grievant wrote to respondent twice seeking the return of Naclario's file. He also called respondent on a number of occasions. Grievant never spoke directly to respondent, only to his secretary. On April 2, 1993, grievant informed respondent's secretary that he would be filing suit against respondent, unless respondent contacted him promptly. See Exhibit K-3 to DRB 95-164. Respondent failed to contact grievant. Grievant also contacted the trial attorney who had represented Naclario below to seek his assistance in contacting respondent. That attorney, too, tried to reach respondent, to no avail. 4T25.[5]

[5] 4T denotes the transcript of the DEC hearing on September 22, 1994 commencing at 4 p.m. for DRB 95-164.

Grievant finally filed an order to show cause against respondent seeking the release of the file and a refund of the $1,500 retainer. Thereafter, respondent forwarded the file to grievant. Respondent sent a letter to the judge requesting that the order to show cause be vacated since the file had been returned. Grievant opposed the request because respondent had not returned the $1,500 retainer to Naclario. Ultimately, respondent returned the retainer, whereupon grievant moved to dismiss the complaint against respondent.

Respondent claimed that he had retained another attorney to prepare the petition and that attorney had advised him that there was no chance of overturning Naclario's conviction. Respondent stated that he believed that he had so advised Naclario. Respondent admitted that it took too long to return Naclario's file (5T89), but was surprised that grievant had sued him. Respondent asserted that he had turned over Naclario's file as soon as it had been returned by the other attorney.

Respondent also failed to reply to the underlying grievance while being investigated by the DEC and failed to file an answer to the formal complaint in this matter.

C. The Koumbiadis Matter (VB-93-4E)

Michael Koumbiadis, the grievant in this matter, and his daughter, were involved in an automobile accident on March 19, 1991. Grievant met respondent while both were at the same

insurance agent. The agent introduced the two and respondent scheduled an appointment for grievant and his daughter.

Respondent recommended that grievant seek medical attention for the injuries he had sustained. During the initial meeting, respondent also informed grievant that he had a basis for a lawsuit. 5T10. After the initial meeting, grievant met with respondent two more times. Thereafter, grievant did not hear from respondent for over a year. 5T12. Grievant began calling respondent in April 1992. His numerous calls to respondent went unreturned. Respondent's secretary always made excuses to grievant as to why respondent was unavailable. 5T17. She also told grievant to make appointments with respondent, which ultimately were cancelled by respondent's office. Grievant's two certified letters to respondent requesting the return of his file also went unanswered.

Grievant finally retained another attorney, who unsuccessfully tried to contact respondent on two or three occasions. The new attorney had to reconstruct grievant's case in order to file a suit on his behalf prior to the running of the statute of limitations.

Grievant sustained knee, back, dental and head problems as a result of the accident. He was treated for approximately six months by a doctor recommended by respondent. Grievant was out of work for one year and incurred approximately $3,200 in medical bills and $7,200 in lost wages.

While respondent claimed that initially he was sure he had returned the Koumbiadis file, he admitted that he was no longer

"one hundred percent" sure. Respondent also claimed that he sent grievant to a dentist and that the dentist had indicated that the accident had not caused any injury to grievant's teeth. Respondent, therefore, refused to take the case because he "wasn't going to advance a claim for injuries he couldn't prove." 5T99. Respondent further contended that he called the client to advise him of the running of the statute of limitations and that, although he tried to schedule an appointment with grievant, grievant never came in or had the time for an appointment.

Respondent failed to reply to the DEC investigation or to file an answer to the formal complaint in this matter as well.

D. The Horvath Matter (VB-94-14E)

Respondent instituted an action against the Bergen Pines Hospital on behalf of his client, Jean Horvath. The suit arose from the death of Horvath's husband, Eugene, while he was a patient at the hospital. The suit was eventually dismissed for respondent's failure to provide answers to interrogatories.

Horvath's husband had been admitted to Bergen Pines in July 1988. He suffered from congestive heart failure and mental problems. He had attempted suicide on a number of occasions. Soon after his admission to Bergen Pines, Eugene committed suicide at the hospital.

Horvath had known respondent for many years. He had represented her in other matters and had also performed legal services for other members of her family. Horvath retained

respondent in September 1988 to represent her against Bergen Pines. Respondent advised Horvath that a lawsuit had to be filed within six months. She claimed that respondent estimated that the suit was worth approximately $225,000. 5T44. Respondent, however, denied making such a valuation since any recovery against the hospital, a state entity, was at that time limited to $10,000 by statute.

Horvath stated that she only met with respondent three times. One of those meetings was with an individual whom she believed to be respondent's secretary. She met with the secretary to answer interrogatories propounded by the defendant. 5T45.

Initially, Horvath was not alarmed when she did not hear from respondent for a while, because respondent had represented her in an earlier personal injury action that took approximately three and one-half to four years to resolve. However, at some unspecified point, Horvath felt that she should be hearing from respondent and began calling him to determine the status of her suit. Horvath never spoke to respondent, only to his secretary. At some juncture, because she was unable to reach respondent, she inquired whether respondent was ill or having problems at home. Respondent's secretary denied that there were any problems and, in fact, scheduled a few meetings, which respondent cancelled. 5T48.

Horvath also became suspicious because she had not received copies of any documents, as in her earlier case. 5T60. She, therefore, inquired of respondent's secretary whether respondent was actually getting the messages that she had called. She began

documenting the dates on which she called respondent. Exhibit H-2 to DRB 95-164. Horvath, thereafter, sent respondent two certified letters, in one she threatened to contact the ethics committee. After approximately fifty unanswered telephone calls and two unanswered certified letters, Horvath contacted another attorney, Marcel R. Wurms, who attempted to reach respondent. Initially, there was no response. Respondent eventually returned one of Wurms' calls, but Wurms was out of the office at the time. When Wurms returned respondent's call, respondent was again unavailable. Thereafter, Wurms filed a grievance with the local ethics committee. Respondent claimed that he returned Horvath's calls and, in fact, left two messages for her with one of her grandsons.

Respondent filed a complaint on Horvath's behalf on August 7, 1990. Exhibit H-8 to DRB 95-164. On June 11, 1991, a motion to dismiss the complaint for failure to answer the defendant's interrogatories was filed by the defendant's attorney. Exhibit H-9 to DRB 95-164. A consent order extending the time to answer interrogatories to August 15, 1991 was submitted to the court on July 30, 1991. Exhibit H-10 to DRB 95-164.

By letter dated September 3, 1991, the defendant's counsel sought an order to dismiss the complaint, again, for failure to answer interrogatories. Exhibit H-11 to DRB 95-164. Respondent received a copy of that letter. Finally, the defendant's attorney sent a letter to respondent attaching an order dismissing Horvath's case. Exhibit H-12 to DRB 95-164.

Respondent failed to reply to the ethics grievance and to file an answer to the formal complaint in this matter.

* * *

In the Scott matter, the DEC determined, after considering Scott's testimony, that, as to the first count (lack of communication and failure to reply to reasonable requests for information),

> Richard Scott was one of those clients who was not totally together and he badgered the office of [respondent] to the extent that [respondent] apparently got disgusted and we do not find that the allegation with respect to the lack of communication has been sustained. We therefore find no cause with respect to that.
>
> [5T192]

The DEC also found that respondent failed to cooperate with the DEC investigator in the Scott matter. It, however, determined that there was no violation of RPC 8.4(c), in that respondent had not attempted to mislead the OAE auditor that his accountant was working on an analysis of the estate records.

Lastly, the DEC found that respondent failed to make or maintain records and receipts and disbursements for the assets and income for the estate of Meyer Scott, in violation of RPC 1.15 and R 1:21-6.

The DEC did not find gross neglect in count four, even though it suggested that there may have been lack of diligence on

respondent's part in failing to file an inheritance tax return for the estate.

As to the Naclario matter, the DEC did not find gross negligence, but concluded that respondent failed to reply to the grievance, even though he was not charged therewith in the complaint, and to a request for information, in violation of RPC 1.3 and RPC 1.4. The DEC did not find a violation of RPC 8.4(a).

In the Koumbiadis matter, the DEC found violations of RPC 1.3 and RPC 1.4(a) but not of RPC 8.4(d).

With regard to the Horvath matter, the DEC found that respondent's repeated failure to keep his client adequately and accurately informed and his repeated failure to return the client's telephone calls or to reply to her letters constituted gross negligence. The DEC also found that respondent failed to keep his client reasonably informed of the status of her case. The DEC found a violation of RPC 1.1(b) (pattern of neglect) because respondent allowed his client's case to be dismissed, even though he had had a number of opportunities to rectify problems with the case.

The DEC recommended that respondent seek professional psychiatric or psychological help and that he practice under the supervision of a proctor for an extended period of time. The DEC also recommended that respondent be responsible for all interest and penalties assessed against the estate of Meyer Scott.

The DEC was satisfied that respondent had shown remorse for his actions and that he currently appreciates the seriousness of

his actions over the past several years. It felt, however, that a period of suspension might do respondent more harm that good and, therefore, concluded that "the full range of discipline" should be taken only in the event of future infractions.

* * *

Respondent attributed most of the problems he encountered with his cases to the fact that he suffered from bouts of "clinical depression". Initially, he had been treated by a psychologist but, in July 1991, he began treatment with a psychiatrist, who prescribed Prozac for the depression. Respondent claimed that, within eight weeks, he began feeling better. His doctor, however, increased the dosage of his medication. As a result, he became a "zombie," felt very agitated while awake and also suffered from excessive sleep.

Respondent eventually switched psychiatrists. His new doctor discontinued respondent's use of Prozac and prescribed Paxil. Respondent claimed that this new medication produced fewer side effects. He stated, at the DEC hearing, that he was fine. In order to deal with his problems, respondent stopped taking on new cases from May 1992 to January 1993. His caseload, therefore, had dropped from 200-250 to approximately fifty cases. Respondent claimed that, although his caseload became more manageable, he nevertheless still had problems completing unpleasant tasks.

As further mitigation, respondent offered into evidence letters from attorneys about his character and the fact that, in January 1993, he began a new business called Equitable Family Mediation, Inc., for matrimonial mediation.

According to respondent, he feels now that he can zealously represent clients and would welcome a proctorship.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent acted unethically is fully supported by clear and convincing evidence.

In both the Wolak and Montoya matters, respondent filed suit, but allowed the actions to be dismissed for lack of prosecution. Thereafter, he failed to notify his clients of the dismissals, failed to reinstate the matters and admittedly failed to turn over the files to new counsel. There is also a question as to whether respondent adequately communicated to the clients that he had decided to terminate the representation. Neither client understood that respondent was "out of the case." At the very least, respondent failed to communicate with his clients and to surrender their property.

The DEC, thus, properly found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 1.16(d) in the Wolak and Montoya matters.

In Rosa, respondent did not file suit in behalf of the children, thereby requiring the intervention of subsequent counsel, who timely filed an action. Respondent admittedly had reservations about the strength of the case, but obviously did not effectively communicate his reservations to Ms. Rosa. When she retained other counsel, respondent failed to turn over her file for a period of years. Thus, as the DEC found, there is clear and convincing evidence of violation of RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 1.16(d).

As to the Scott matter, respondent claimed that Richard Scott was mildly retarded and suffered from "auditory dyslexia". He also claimed that, because Scott was angry with him for not representing him in a lawsuit, Scott's testimony should not be considered credible. Even the presenter noted that the panel would be justified in having doubts about Scott's testimony. 3T178. The presenter, however, also indicated that some credence had to be given to Scott's testimony, based on respondent's overall pattern of conduct.

The DEC's conclusion that Scott badgered respondent and that respondent apparently became "disgusted" does not excuse respondent from his obligations. Scott's testimony that he often was unable to speak to respondent; that he was required to contact Shearson-Lehman directly to determine the status of the estate; and that the broker there also indicated that he was unable to contact

respondent is in line with respondent's actions in the other cases before the Board. While Scott may have been unsophisticated and may have been excited or agitated at the DEC hearing, his testimony was sufficiently clear and consistent to establish a violation of RPC 1.4(a).

The DEC properly concluded that respondent violated RPC 8.1(b) by failing to reply to lawful demands for information in a disciplinary proceeding. The Board also finds a violation of RPC 8.4(c), based on the conclusion that respondent misrepresented to the OAE investigator that he had provided his accountant with records to enable him to prepare a complete analysis of the estate records.

Respondent's failure to make or maintain proper records of receipts and disbursements, assets and income for the estate violated RPC 1.15 and R 1:21-6. (Because of the missing records and respondent's lack of adequate recordkeeping practices, the investigator was not able to establish or determine whether a misappropriation of client funds had occurred).

Meyer Scott passed away in 1985. As of September 1993, respondent still had not filed an estate tax return. Moreover, as of that date, he had ignored two earlier letters advising him that taxes were due on the estate. The DEC failed to find violations of gross neglect or lack of diligence based on the above circumstances. The Board, however, finds a lack of diligence in violation of RPC 1.3, particularly in light of the fact that penalty interest was accruing against the estate.

The DEC concluded that in the Naclario matter, respondent's conduct did not constitute gross neglect, even though his failure to prosecute a petition for certification, after obtaining an extension, caused his client's case to be dismissed. Respondent claimed that he spoke to his client on the phone and thought that they had reached an agreement that respondent would not proceed with the case because there was no chance of success. There was nothing in writing, however, to memorialize such a conversation. Moreover, Naclario's continued efforts to try to obtain his file, both personally and through his new attorney, belie respondent's claim. The Board, therefore, finds a violation of RPC 1.3 and RPC 1.1(a).

The Board also finds clear and convincing evidence of a violation of RPC 1.16(d) for respondent's failure to timely surrender the file.

The Board concurs with the DEC's conclusion that respondent failed to keep his client reasonably informed, in violation of RPC 1.4(a).

The DEC properly found clear and convincing evidence of violations of RPC 1.3 and 1.4(a) in the Koumbiadis matter.

As to the Horvath matter, the Board concurs with the DEC's finding that respondent repeatedly failed to return his clients telephone calls and failed to keep her informed about the status of her case, in violation of RPC 1.4(a). The DEC also properly found gross negligence, on respondent's part, in violation of RPC 1.1(a),

for allowing his client's case to be dismissed, despite the numerous opportunities he had to rectify the problem.

* * *

In sum, respondent's conduct in the Wolak, Montoya and Rosa matters included violations of RPC 1.1(a) (gross negligence), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with a client) and RPC 1.16(d) (failure to turn over a client's file). Respondent also failed to reply to lawful demands for information from disciplinary authorities in these matters, in violation of RPC 8.1(b). Respondent's conduct in the Scott matter constituted violations of RPC 1.4(a), RPC 8.1(b)(failure to respond to a lawful demand for information in a disciplinary proceeding), RPC 8.4(c)(conduct involving misrepresentation), RPC 1.15 and R 1:21-6(recordkeeping violations) and RPC 1.3. In the Naclario matter, respondent violated RPC 1.3, RPC 1.4(a) and RPC 1.16(d). Respondent's conduct in Koumbiadis constituted violations of RPC 1.3 and RPC 1.4(a). In Horvath, respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a). Lastly, his conduct in all matters clearly established a pattern of neglect, in violation of RPC 1.1(b).

The Court has imposed discipline ranging from a public reprimand to a term of suspension where there has been a mixed combination of violations of the sort exhibited by respondent. See, e.g., In re Chatburn, 127 N.J. 248 (1992) (public reprimand for pattern of neglect in three matters and failure to communicate;

the attorney had previously received a private reprimand); In re Breingan, 120 N.J. 161 (1990) (public reprimand for pattern of neglect in three matters, failure to communicate with clients and failure to diligently pursue a client's interests in one of the matters; failure to cooperate with the DEC during the course of the investigation was considered an aggravating factor); In re Marlow, 121 N.J. 236 (1990) (three-month suspension for gross neglect, lack of diligence, pattern of neglect and failure to communicate in two cases, misrepresentation of case status in one of the cases and lack of cooperation with the DEC; the attorney's prior public reprimand was also considered); In re Knight, 134 N.J. 121 (1993) (six-month suspension for gross neglect in one matter, misrepresentation in three matters, failure to cooperate with disciplinary authorities and recordkeeping violations); and In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for pattern of neglect in four matters, misrepresentation to clients, failure to cooperate with the disciplinary authorities and failure to remit a fee arbitration award; the attorney had previously received a prior public reprimand).

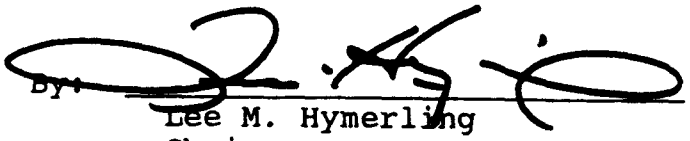
Based upon respondent's cumulative violations in these seven matters, the Board unanimously voted to impose a six-month suspension. Two members did not participate in the Board's review.

The Board further requires that respondent provide proof of psychiatric fitness to practice law prior to his reinstatement and that he practice under the supervision of a proctor approved by the Office of Attorney Ethics, for a period of one year.

The Board further requires that respondent personally pay any and all penalties and interest assessed by the New Jersey Division of Taxation in the Scott matter.

Finally, the Board requires respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/2/95

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board