SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-440

IN THE MATTER OF	:
BASIL D. BECK,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: April 20, 1994

Decided: September 21, 1994

Mitchell H. Kizner appeared on behalf of the District I Ethics Committee.

Harold B. Shapiro and Dana D. Teague 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 upon a recommendation for public discipline filed by Special Master Jeffrey K. Israelow. The complaints charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.16(d) (terminating representation), RPC 3.3 (candor toward a tribunal), RPC 4.1 (truthfulness in statements to others), RPC 5.3 (responsibilities regarding non-lawyer assistants), RPC 5.5 (unauthorized practice of law) and RPC 8.4(b), (c) and (d) (criminal act, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1963. He had been in private practice in Bridgeton, Cumberland County, and in Somers Point, Atlantic County, until he was suspended in 1991. He has an extensive ethics history. On September 27, 1988, he was privately reprimanded for gross negligence and failure to communicate in an estate matter. On December 29, 1988, respondent was again privately reprimanded, this time for lack of diligence in a matrimonial action and in a related civil action and for failure to return the files to the client in a prompt manner, after he was discharged from representation; respondent also failed to transmit to the clients in a timely fashion the rental fees he had collected on their behalf. On May 1, 1990, respondent was publicly reprimanded for lack of diligence and a pattern of neglect in three matters, failure to notify the client of a settlement conference in another matter, failure to communicate in two of those matters, and failure to expedite litigation in a fourth matter. By Order dated June 27, 1991, respondent was temporarily suspended from the practice of law. On July 18, 1991, he was reinstated, subject to certain conditions, including the appointment of a trustee to supervise his practice. On October 22, 1991, the Court terminated the trusteeship and temporarily suspended respondent. On December 31, 1991, he was again reinstated to the practice of law, subject to conditions. On January 30, 1992, the Court suspended respondent for a period of three months – and until the conclusion of all then pending ethics matters – for failure to cooperate with the disciplinary authorities. Respondent remains suspended at this time.

The Price Matter (District Docket No. I-91-24E)

On or about December 3, 1990, Jeffrey Price retained respondent to represent him in connection with a criminal complaint. Price had previously been represented by the Office of the Public Defender. Price hired respondent because he was unhappy with the plea offer made to his former attorney (1T 78).[1] Respondent appeared in court with Price on January 22, 1991, at which time the plea offer was rejected and respondent filed a trial memorandum, making some reference to certain motions that respondent might be filing in Price's behalf (Exhibit P-1, 1T 84). Although Price believed that respondent would be filing those motions (1T 47-48), respondent did not do so (1T 105). With regard to the trial memorandum and expected motions, respondent testified that he inserted information about potential motions in the memoranda as a matter of course and that he told Price that he would determine later whether to file them (10T 192-193).

Respondent was also scheduled to appear in court with Price for a series of pre-trial conferences on April 22, 1991, June 17, 1991 and June 21, 1991 (1T 65-67). Respondent failed to appear on

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[1] The transcripts of the hearings before the Special Master are designated as follows:
1T refers to the hearing on June 21, 1993
2T refers to the hearing on June 22, 1993
3T refers to the hearing on June 23, 1993
4T refers to the hearing on June 24, 1993
5T refers to the hearing on June 25, 1993
6T refers to the hearing on July 2, 1993
7T refers to the hearing on July 12, 1993
8T refers to the hearing on August 2, 1993
9T refers to the hearing on August 3, 1993
10T refers to the hearing on August 11, 1993
11T refers to the hearing on August 12, 1993
12T refers to the hearing on September 2, 1993.
13T refers to the hearing on the morning of June 29, 1992.
14T refers to the hearing on the afternoon of June 29, 1992.

each of these dates. Price appeared without respondent and continuances were granted by the court. The record does not reveal how Price was notified of the scheduled conferences (3T 72). There is no correspondence or memorandum in the file regarding respondent's failure to appear (1T 124). Price testified that he telephoned respondent when he did not appear and that, each time, respondent had an excuse for not being in court (1T 48). By letter dated June 25, 1991 (Exhibit P-3), two days before the effective date of respondent's suspension, Price informed respondent that he no longer wished to have him represent him and requested the return of the retainer and his file (1T 52).

On July 15, 1991, Price ultimately appeared without respondent, who was already suspended and negotiated his own plea bargain with the assistant prosecutor. Price was sentenced on August 6, 1991 (1T 50).

Respondent confirmed that Price called him after each missed pre-trial conference. Respondent testified that he or a member of his staff sought continuances from the court shortly before each hearing and, uncertain if they would be granted, had Price appear to forestall the issuance of a warrant for Price's arrest (10T 24). Respondent also stated that he was uncertain if Price could be reached by telephone (10T 186).

Respondent contended that his actions were part of a defense strategy, suggesting that the postponements resulting from his failure to appear were deliberate to prolong the proceedings and to wait for the prosecutor who was handling the case to leave the

prosecutor's office. According to respondent, the prosecutor was a "gung-ho Marine" who, respondent apparently had reason to believe, was leaving the prosecutor's office. Respondent was of the opinion that another prosecutor would offer a better plea to his client (10T 30-31). Respondent also hoped that the extended time would diminish the State's ability to produce witnesses against Price. In fact, the original plea bargain offered to Price and the public defender by the first prosecutor, prior to respondent's involvement, was substantially harsher than the one Price ultimately received (1T 75-76). It does not appear that Price was aware that this was respondent's strategy.

The assistant prosecutor testified that he was assigned the case in March or April 1991, after the former prosecutor handling the case left the office. The assistant prosecutor explained that he analyzed the situation in light of serious weaknesses in the State's case, and then negotiated the plea with Price in July (1T 133). The assistant prosecutor further testified that "[respondent] had nothing to do with how I handled it. I never discussed it with him. He never called me, I never saw him in court, nothing" (1T 133; See also 1T 109, 116). This is in conflict with respondent's testimony that he contacted the assistant prosecutor on the day Price was due in court and that he was told that the case had been plea bargained (10T 32). (It should be noted that that date was after respondent had been suspended.) The assistant prosecutor further testified that the original prosecutor in charge of the case had a stern reputation

original prosecutor in charge of the case had a stern reputation and that delaying the proceeding would only have been advantageous to Price (1T 133).

The Special Master was unable to determine if respondent's actions were grounded on strategy, given the fact that respondent was regularly overextended in the handling of his workload. The Special Master noted that Price was not harmed by respondent's actions, although he was inconvenienced and did not receive the representation for which he had paid respondent.

The complaint charged respondent with a pattern of negligence, in violation of RPC 1.1, and lack of diligence, in violation of RPC 1.3. The Special Master determined that respondent had violated RPC 1.1(b) and RPC 1.3.

The Thomas Matter (District Docket No. I-91-41E)

Angela Thomas retained respondent to represent her in connection with damages sustained on August 8, 1988, when a tree fell on her automobile. Thomas sought to proceed with a personal injury claim and a claim for property damage (1T 135). Thomas originally spoke with Stephen Kernan, Esq., who was then a member of the law firm of Beck, Milita and Kernan, and who initially handled the matter. Thomas and Kernan discussed suing both the public entity and the private land owner (1T 154-155). When Kernan was later suspended from the practice of law, Thomas received a letter from respondent advising her of Kernan's suspension and indicating that he was representing her.

Although a Notice of Tort Claim was timely filed and acknowledged by the county insurance adjuster, no suit was filed within the statute of limitations. Respondent testified that it was his belief that, as of the DEC hearing, the statute might still not have run on the property claim (10T 199; See also 1T 137-138). According to Thomas, she spoke with either respondent or with another attorney in his office, who told her that the statute of limitations had run, advised her to find another attorney and proposed that they settle out of court (1T 143-144).

Respondent essentially stipulated the facts in this matter. According to his testimony, he left a note on the file for a secretary to file the suit. He admitted responsibility for the failure to file the complaint (10T 34-35).

The Special Master found that respondent had violated RPC 1.1(b), as charged in the complaint.

The Walker Matter (District Docket No. I-91-55E, formerly I-90-03E)

Prior to January 1990, respondent represented Thomas Walker Jr. in a number of legal matters. Walker testified telephonically that he contacted respondent, in January 1990, to indicate that he wanted his files returned to him. According to Walker, in February or March 1990, respondent "coerced" him into allowing the representation to continue. Subsequently, in approximately August 1990, Walker again instructed respondent to turn his files over to his new attorney, Robert S. Greenberg, Esq. According to Walker, the files were never given to the new attorney (2T 35-36).

The Special Master found that Walker's testimony was "less than clear and credible." Indeed, less than one week before the ethics hearing, Walker told respondent's counsel to have respondent telephone him and make arrangements either to reimburse Walker or to do the work Walker had originally wanted him to do. In return, Walker would agree not to testify at the DEC hearing (2T 88-89).

It is unquestionable, however, that Greenberg attempted on several occasions, by telephone and letter, to obtain the files from respondent. Even assuming, for argument's sake, that Walker's wishes were not made clear to respondent, Greenberg clearly informed respondent, by letter dated February 12, 1991 (Exhibit P-30), of Walker's wish to have respondent turn over the files to him. The files were ultimately turned over to Greenberg on August 20, 1991 by Judge Edward S. Miller, respondent's supervising trustee (3T 14, Exhibit P-31), but only after Walker had filed a grievance with the DEC. Following his review of the file, Greenberg decided not to pursue the matter, based upon a liability question and also a possible threshold issue (3T 24).

Respondent testified that he first became aware that Walker wanted his files when he received the letter from Greenberg, in February 1991. He stated that he would not have believed such an instruction from Walker because "he was all over the place." In contrast, Greenberg testified that, during the time he was in communication with Walker, he was unaware of any vacillation on Walker's part with regard to his relationship with respondent (3T 35-36). Respondent also testified that, after the grievance was

filed by Walker, he met with Mitchell H. Kizner, Esq., the presenter herein. Respondent thereafter tried to return the files to Walker. He claimed that, although he had made an appointment to meet Walker at his apartment to deliver the files, Walker did not appear (10T 19-22).

The Special Master determined that respondent had violated RPC 1.16(d), as charged in the complaint.

The Allen Matter (District Docket No I-91-32E)

John W. Allen, Sr., the grievant herein, failed to appear at the DEC hearing. Accordingly, the Special Master recommended that this matter be dismissed.

The Pantellas Matter (District Docket No. I-91-19E)

In the Summer of 1990, Heather Pantellas retained respondent to represent her in a personal injury matter arising from a January 1990 accident involving an allegedly defective automobile. Pantellas testified that she subsequently made numerous telephone calls to respondent, during which respondent advised her that an expert was examining her car (2T 120). By letter dated January 10, 1991 (Exhibit P-18), Pantellas notified respondent that she no longer wished to have him represent her and instructed him to transfer her file to her new attorney, Gary Brownstein, Esq. According to Pantellas' testimony, after she forwarded the letter, respondent telephoned her and indicated that an expert was looking at her car. Pantellas added that, during that conversation, she

had not acquiesced to respondent's continued representation (2T 123-124).

By letters dated January 14, 1991 (Exhibit P-19) and February 26, 1991 (Exhibit P-20), Brownstein advised respondent to forward the file to him. Exhibit P-21, a copy of Brownstein's February 26, 1991 letter, contains a notation from respondent that he had spoken with Pantellas and was continuing to represent her. Although the record is not clear as to how Brownstein received this information, by letter dated March 20, 1991 (Exhibit P-22), he asked Pantellas if she had agreed to respondent's continued representation. Pantellas replied that she did not want respondent to represent her. By letter dated May 23, 1991 (Exhibit P-23), Pantellas contacted the DEC secretary, copying the letter to respondent and Brownstein. In June 1991, she filed a grievance against respondent. Three to four months later, her file was turned over to her by Theresa C. Hunsberger, Esq., one of the trustees appointed by the Court to oversee respondent's practice.

Testimony was also offered in this matter by Marc Vitale, Esq., an attorney at Brownstein's law office. Vitale attempted to obtain the file from respondent on numerous occasions via telephone over a three- to four-month period. According to Vitale, no action was taken on Pantellas' behalf by the Brownstein office because they were unable to evaluate the case without the file (2T 146). Vitale also testified that Pantellas had told him that she had ultimately obtained the file through another attorney and that,

although no products liability action had ever been filed, she had received some compensation through an insurance carrier (2T 146).

Respondent admitted that he failed to turn over Pantellas' file, explaining that "it got away" from him (2T 152, 10T 35-16). He also testified that, for a time, Pantellas had changed her mind about continuing his representation (10T 180-181). In fact, respondent did appear in Municipal Court with Pantellas several months after her accident, at no compensation (2T 129).

The complaint charged, and the Special Master found, that respondent had violated RPC 1.16(d).

The Litwack Matter (District Docket No. I-91-42E)

This matter involved four counts of misconduct against respondent. The grievant herein, Robert Litwack, Esq., represented The Farmers and Merchants National Bank of Bridgeton in a foreclosure action against respondent's house. A judgment had been obtained and a sheriff's sale was scheduled for September 11, 1991.

The first count of the complaint alleged that, on September 11, 1991, respondent appeared before the Honorable L. Anthony Gibson, J.S.C., to seek a postponement of the sheriff's sale. Respondent represented to the court that he owned a restaurant known as "Theresa Martins" "free and clear," valued at approximately $365,000.00 (Exhibit P-25 at 7). It is undisputed that respondent's statement was false, in that respondent had, in fact, conveyed the property to his mother (Exhibit P-29). At the hearing before Judge Gibson, Litwack, who was unaware that

respondent did not own the property, pointed out to the judge that the property was not "free and clear" (5T 5-6). Subsequently, during respondent's bankruptcy proceeding on October 10, 1991, Litwack pointed out to Judge Judith H. Wizmur that respondent had made fraudulent statements to Judge Gibson (5T 12).

Respondent testified that he was attempting to show that he had financial resources and that he should have clarified his statement to reflect that he had "control" of the property, but not ownership (10T 40-41, 166). He nonetheless admitted that his misrepresentation to the tribunal was a violation of RPC 3.3.

The second count of the complaint alleged that, on or about September 25, 1991, respondent, in the same general transaction, caused a voluntary petition in bankruptcy to be filed in the United States Bankruptcy Court for the District of New Jersey and, thereafter, on or about October 16, 1991, caused a supplement to the petition to be filed. The complaint alleged that respondent failed to disclose ownership of "Theresa Martins," thereby making mutually inconsistent statements to two tribunals. In fact, the October 16, 1991 supplement gave information about "Theresa Martins" (Exhibit R-13).

This count of the complaint charged respondent with a violation of RPC 3.3. During the DEC hearing, the presenter agreed to dismiss it. In his report, the Special Master noted that there was no lack of candor to the tribunal in this instance since respondent, in fact, did not own the property.

The third count alleged that respondent had sent a letter to Sheriff James T. Plousis, on September 10, 1991, requesting an adjournment of the sheriff's sale and misrepresenting that Litwack had no objection thereto. Exhibit P-26. It was also alleged that respondent had made a similar misrepresentation during a telephone call to Sheriff Plousis.

The September 10, 1991 letter from respondent stated in pertinent part:

> I have spoken to my adversary, Robert C. Litwack, who has no objections to a postponement of the Sheriff's sale in the above referenced matter. I request this adjournment because I am in the process of obtaining financing to take care of this obligation as well as other obligations. I am requesting at this time the one discretionary adjournment. Please notify me of the new date.
>
> [Exhibit P-26]

Litwack was copied on the letter, although he stated that he only received a copy from Sheriff Plousis at a later date.

Extensive testimony was offered by Litwack and Sheriff Plousis about a series of telephone conversations and letters between the two and respondent, regarding respondent's request for an adjournment. Litwack's testimony was clear that he had not agreed to the adjournment and that he had conveyed that to respondent via telephone and letter.

Sheriff Plousis testified that respondent had telephoned him on the evening of September 10, 1991, prior to the scheduled sale, to request a stay of that sale. Sheriff Plousis testified that respondent had represented to him that Litwack had agreed to postpone the sale. Sheriff Plousis explained, however, that,

whenever he received a request from a defendant purporting to have the plaintiff's consent to an adjournment, he would always require the plaintiff's written confirmation of the consent (6T 44).

On September 11, 1991, while before Judge Gibson, respondent represented that his September 10, 1991 letter contained a typographical error (2T 160, Exhibit P-25 at 11). Respondent told Judge Gibson that Litwack had not agreed to an adjournment of the sale (2T 193). Judge Gibson granted a two-week adjournment to allow respondent to present evidence as to his assets (2T 171).

Respondent contended that he telephonically dictated his September 10, 1991 letter to his secretary, who affixed respondent's signature to it and transmitted it without his reading it (10T 40). He stated that the first sentence was intended to indicate that Litwack had an objection to the postponement. He testified that he knew that he did not have Litwack's consent to the adjournment (10T 39). Respondent testified that he might have misdictated or his secretary could have misheard him, but that he was "90% certain" that he did not dictate it that way (10T 160-162). His best judgment was that he had dictated it right and it had gone out wrong. In addition, respondent testified that he did not verbally advise Sheriff Plousis during, their September 10, 1991 telephone conversation, that he had Litwack's consent to the adjournment (10T 39).

The complaint alleged a violation of RPC 4.1. The Special Master did not find clear and convincing evidence of the alleged misrepresentation during the telephone call.

With regard to respondent's September 10, 1991 letter, the Special Master noted that it made little sense for respondent to misrepresent Litwack's position and then send him a copy of the letter, pointing out that the history of bad feelings between them was evident from the record. The presenter, however, argued that this was an example of respondent's loss of control over his practice and finances and could be "the product of a desperate man" (Special Master's Report at 13).

The Special Master found that, given the totality of the circumstances, including the misrepresentation to Judge Gibson, and given respondent's financial affairs and the grammatical context of respondent's sentence as written, vis-a-vis the correct version, respondent had been untruthful in his written statement, thereby violating RPC 4.1.

Respondent was charged in count four with violations of RPC 5.3 and RPC 5.5, in that he authorized his sister, a secretary in his office, to sign his name to the above mentioned bankruptcy petition and to transmit correspondence to Sheriff Plousis about a postponement of the bankruptcy sale. At the close of the presenter's testimony, the Special Master dismissed the alleged violation of RPC 5.5 because no evidence had been submitted as to the bankruptcy petition (8T 60). With regard to the violation of RPC 5.3, the Special Master found that the letter to Sheriff Plousis clearly indicated that it had not been signed by respondent and that it bore an authorized or conformed signature. Accordingly, the Special Master found no violation in count four.

The Oram Matter (District Docket No. I-91-15E)

The grievant, John Oram, did not testify in this matter, which charged respondent with a violation of RPC 1.4. The Special Master, therefore, recommended the dismissal of this count.

The Reed Matter (District Docket No. I-91-27E)

In the course of his representation of William H. and Verna Reed, respondent agreed to sign a consent order dismissing their case without prejudice and to submit that order to the United States Magistrate, now United States District Court Judge Jerome B. Simandle. Respondent was required to sign and submit the order to the court by 1:00 p.m. on April 10, 1991. Although respondent assured Judge Simandle that he would submit the order by the required time, he did not do so. In fact, he never submitted the consent order to the court.

Respondent stipulated that his conduct had violated RPC 8.4(d) (3T 42), as alleged in the complaint, again explaining that it "got away" from him (10T 38).

The O'Reilly Matter (District Docket No. I-92-11E)

Theresa O'Reilly retained respondent, in March 1990, to appeal a ruling on a motion to suppress evidence against her in a criminal matter. Respondent had previously represented her in connection with a motor vehicle violation (5T 145). O'Reilly had been represented by another attorney on the suppression motion. At the

time that O'Reilly retained respondent, the remainder of her criminal case was yet to be resolved.

According to O'Reilly, respondent requested $1,500 to pursue the appeal, which funds he received on or about March 17, 1990 (5T 148). In May 1990, respondent requested an additional $500. It was O'Reilly's understanding that the $2,000 would cover all costs associated with the appeal (6T 82) and that respondent would represent her on the rest of the criminal case (5T 146-147).

A favorable plea bargain was obtained on the balance of the criminal case, whereby O'Reilly was given credit for time served on her custodial sentence. According to O'Reilly, the plea was entered on May 15, 1990; she was scheduled to be released on June 15, 1990. She testified that respondent wanted to have a meeting with an individual from the Pre-Trial Intervention Program on June 15, 1990 and was to return later in the day . Respondent did not come back, however, and O'Reilly returned to jail for an additional week (5T 160-162). She was released on June 22, 1990. One year later, in June 1991, respondent appeared in municipal court with O'Reilly on a matter related to the criminal case (6T 69). According to O'Reilly, in July 1991, respondent contacted her and asked that she meet with him. She learned then that, although respondent had been retained to pursue her criminal appeal in March 1990, he had not done so and further had not obtained the necessary transcripts for her appeal. O'Reilly requested that her criminal file be turned over to her at that time. Respondent told her that, because he was in the middle of her civil case (See discussion,

infra), the file was in his other office. When the file was not returned to her, O'Reilly went to the Office of the Public Defender, who filed a motion seeking leave to appeal on December 10, 1991 (Exhibit P-46). The Appellate Division granted a motion to file the appeal nunc pro tunc, on January 6, 1992 (Exhibit P-47). The record does not reveal the outcome of the appeal.

Respondent testified that he was retained in connection with the criminal indictments, not the appeal of the suppression motion, although O'Reilly had mentioned that she wanted to pursue it (10T 32-33).

The complaint charged respondent with violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a). The Special Master noted that, given the outcome of the case, the suppression ruling had become a moot point. While the Special Master understood the reasons why O'Reilly desired the appeal, he did not find clear and convincing evidence that respondent had violated RPC 1.3 in not filing it. Although Exhibit P-49, O'Reilly's case folder, included a writing stating "Must file an appeal from suppression" with other additional language, it is unclear that this remained part of respondent's obligation, particularly in light of the favorable plea bargain. Accordingly, the Special Master found no violation in this count of the complaint.

The second count of the complaint alleged that O'Reilly retained respondent to file a suit for malicious prosecution against a woman with whom her husband had had an affair. O'Reilly

testified about her numerous conversations with respondent regarding the intended litigation. She further produced two letters that she wrote to respondent, dated February 20 and February 27, 1990 (Exhibits P-50 and P-51), regarding the underlying facts in the civil case. She testified that respondent had led her to believe that he was pursuing the litigation (5T 149-150).

O'Reilly obtained her file from Theresa Hunsberger, Esq., one of respondent's trustees, in February 1992. A review of the file revealed that respondent had not filed the suit (5T 173). Although O'Reilly sought assistance from other attorneys, the suit was never filed because the statute of limitations had run (5T 224).

Of import is a notation on Exhibit P-49, respondent's file folder in O'Reilly's case, which reflects that $10,000 in fees owed in the criminal matter would be collected from any recovery in the civil litigation. Although defense counsel raised questions as to the proof that these were respondent's notes, O'Reilly testified that she had seen respondent make notes on the file folder (5T 183). It is clear from her testimony that O'Reilly understood, following the June 15, 1990 meeting with respondent, that his fee for the trial level criminal matter would be taken from her award in the civil case (6T 89-90). O'Reilly added that there were never any disputes between herself and respondent about money (6T 124).

There was no written retainer agreement in the civil matter and, accordingly, no writing to establish whether respondent accepted the representation in this matter. Of some evidentiary

value on this issue, however, is the fact that respondent sent O'Reilly to consult with a psychiatrist because of her stress. O'Reilly saw the psychiatrist twice (5T 155, 6T 99). Respondent had explained to O'Reilly the need to show an injury to support the civil case (6T 79).

The complaint charged respondent with violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a).

The Special Master found that, although O'Reilly was not necessarily an entirely credible witness, there was sufficient evidence to conclude that she had retained respondent to represent her in the civil matter and that his failure to represent her or to clearly indicate his intention not to represent her was a violation of RPC 1.3 and RPC 1.4(a).

The Passman Matter (District Docket No. I-92-28E)

The grievant, Harold Passman, contended that respondent had been retained to compromise and settle an issue of outstanding legal fees owed by Passman to the firm of McGahn, Friss and Miller. George K. Miller, Jr., Esq., a former member of the firm, testified that, in October 1991, his law firm had filed a lawsuit against Passman for fees due to the firm in the amount of $2,889.40 (6T 6). Subsequent to the filing, respondent telephoned and spoke with Miller and offered to settle the matter for $750. A compromise was reached at $1,250 (6T 8-9). No payment was forthcoming, however. Ultimately the law firm was paid, after obtaining a judgment

against Passman in the amount of $3,560.12, on June 25, 1993 (Exhibit P-52).

The complaint charged that Passman gave respondent $1,200 to deliver to McGahn, Friss and Miller and respondent neither delivered the funds nor returned them to Passman. Violations of RPC 1.1(b), RPC 1.3 and RPC 8.4(b) and (c) were alleged.

Despite substantial efforts by the presenter, Passman never appeared before the Special Master. Testimony was offered by Tobias Murphy, who had met respondent in 1987 and had introduced him to Passman. Murphy was present when Passman allegedly gave respondent the $1,200. Although Murphy testified that he has no animosity toward respondent, he contended that respondent owes him in excess of $20,000 (6T 178-181). The Special Master found that Murphy's testimony was not credible and did not substantiate the allegation that respondent kept the funds given by Passman to the McGahn firm. Accordingly, the Special Master granted respondent's counsel's motion to dismiss this matter (8T 18).

The Tarantini Matter (District Docket No. I-91-46E)

M. Adam Tarantini retained respondent to represent him in connection with a personal injury matter arising from a bicycle accident in mid-July 1987, in which Tarantini was struck by a car. There was no retainer agreement. The record reveals that respondent's family and the Tarantini family had had a close relationship over an extended period of time. Respondent received

no compensation for work done on Tarantini's behalf in this case or for his family members (7T 21).

Tarantini understood from his discussions with respondent that suit was being filed against the driver of the vehicle as well as Ocean City, the owner of the vehicle (7T 12, 15-16). Tarantini testified that respondent assured him that he was pursuing the matter (7T 13).

Respondent did some work on the file and obtained reports from treating physicians (7T 13-14). After reviewing one medical report, Tarantini wanted to pursue a medical malpractice action against one of his treating physicians (7T 14-15). Tarantini testified that respondent had told him that he had no cause of action against the doctor. According to Tarantini, he and respondent had an argument, whereupon Tarantini decided that he wanted another attorney. Respondent retorted that he would not turn over the files and that he would take care of the matter (7T 16). Tarantini further testified that he thought he needed "a different kind of lawyer because [he] had a bigger case than [he] initially suspected" (7T 15).

In early 1991, Tarantini spoke with Harvey Mitnick, Esq., to have him obtain the file from respondent. According to Tarantini, Mitnick was unable to obtain the file. Tarantini then sought the services of Richard Stoloff, Esq. to pursue both cases for him. However, a letter from Stoloff to Mitnick, dated February 5, 1993 (Exhibit R-23), indicates that he was pursuing only the medical malpractice action (7T 36-37).

The complaint filed in this matter charged respondent with failure to file suit within the applicable statute of limitations. The complaint was later amended to reflect that, although suit had been timely filed, respondent had allowed it to be dismissed without Tarantini's authorization. Respondent was sent a notice of dismissal for failure to prosecute on February 15, 1990. An order of dismissal was entered on March 16, 1990. According to Tarantini, respondent never informed him that the complaint had been dismissed. Instead, he learned about it from the presenter in this matter, in the Spring of 1993 (7T 20).

Respondent received several pieces of correspondence from the insurance carrier for Ocean City. He stated that he did not reply because he deemed it inappropriate (12T 24-27). He explained that he did not forward the information because he felt Tarantini was unable to sustain his claim, a circumstance that might be harmful to the medical malpractice case (12T 40). He also stated that he had filed the complaint in the personal injury matter on the last possible day because he was having "intellectual and moral difficulties;" he had filed the complaint merely to protect his client (12T 28-29). Respondent testified that his difficulties stemmed from Tarantini's falsification of a medical condition or claim. He testified that he explained to Tarantini that there was no medical report establishing causation between the accident and the injuries. They also discussed the medical malpractice case. Respondent further testified that Tarantini told him that he would provide a medical history to a doctor to support his case.

Thereafter, respondent received a report from Roger E. Farber, M.D., dated December 21, 1990. Respondent did not move to reopen the case because he believed that the report was based on a contrived history by Tarantini (12T 15-19). Accordingly, he forwarded the report to Tarantini by letter dated January 23, 1991.

With regard to the lack of correspondence from respondent to Tarantini, respondent testified that he saw Tarantini on a daily basis. He also testified that he advised Tarantini, prior to the dismissal, that he would not pursue the case. Respondent further claimed that he had notified Tarantini of the dismissal, although he did not recall forwarding the order to him (12T 35-38). According to respondent, he orally advised Tarantini's family that he had a certain amount of time in which to reopen the case (12T 31-32).

The complaint and amended complaint charged respondent with a violation of RPC 1.1. The first count of the complaint, failure to file suit within the statute of limitations, was withdrawn (8T 49).

The Special Master was unable to determine the accuracy of respondent's claim regarding Tarantini's medical condition. He noted that this was another instance of respondent's "self-admitted failure to reduce important communications to writing" (Special Master's Report at 22). The Special Master found that respondent violated RPC 1.4(b) and RPC 1.16(d).

* * *

The following two matters were considered by the Board at its January 27, 1993 meeting and were remanded to the DEC to be

consolidated with the other then pending matters. The scope of the remand was limited to evidence by way of defense or mitigation.

The Baylinson Matter (District Docket No. I-93-10E, formerly, I-91-37E)

On January 18, 1990, respondent filed a complaint on behalf of Richard Dougherty, Jr. against Trump Castle in the Special Civil Part of the Superior Court of New Jersey - Law Division, Atlantic County. The defendant in that action was represented by Russell L. Lichtenstein, of the law firm of Cooper, Perskie, Aprile, Niedelman, Wagenheim and Levenson (Cooper, Perskie), of Atlantic City.

On June 29, 1990, the court ordered respondent's law firm to pay to Cooper, Perskie the amount of $320, representing fees and costs incurred by that firm, when respondent did not appear at a scheduled deposition (Exhibit G-1). When respondent failed to comply with that court order, Christopher Baylinson, an associate at Cooper, Perskie, filed a motion, returnable on November 9, 1989, to hold respondent in contempt (Exhibit G-2). In his affidavit in support of that motion, Baylinson informed the court of his repeated attempts to obtain payment of the $320 sum between the date of the initial court order, June 29, 1990, and the date of the filing of his motion, October 18, 1990.

On the return date of the motion, respondent did not appear. Although the court did not issue an order holding him in contempt, it did order respondent to show cause, on December 7, 1990, why he

should not be held in contempt (Exhibit G-3). The order also required respondent to pay $175 for fees and costs associated with Cooper, Perskie's attempt to collect the outstanding amount of $320. On November 15, 1990, Baylinson sent respondent a copy of that order to show cause (Exhibit G-4). When respondent again did not appear in court on December 7, 1990, the court ordered yet another hearing on January 11, 1991 (Exhibit G-5). Baylinson informed respondent of the modified order by letter dated December 7, 1990 (Exhibit G-6) and also caused respondent to be personally served with that order (Exhibit G-7). Once again, respondent did not appear in court on the return date of the order to show cause. The court then signed an order holding him in contempt and also ordering his arrest, if Baylinson so elected. Instead, Baylinson opted to file a grievance with the DEC.

On December 28, 1990, respondent wrote to Baylinson acknowledging that he had received his December 7, 1990 letter notifying him of the January 11, 1991 court appearance and, at the same time, informing Baylinson that James Milita, a former partner of respondent's firm, was the attorney responsible for the underlying litigation (Exhibit G-9).

On December 29, 1990, however, Milita wrote to Baylinson, explaining that he had not been responsible for the file and that respondent had requested that he handle the deposition because of a complex trial in which respondent was involved on that day. According to that letter, Milita indicated to respondent that he would handle the deposition in his behalf, if he were released from

his own matters on that day at a reasonable time. However, when Milita arrived at the place of the deposition one hour after the scheduled time, he discovered that Lichtenstein had already left. See Exhibit R-1.

On August 23, 1991, respondent forwarded to Baylinson a check in the amount of $320.

At the DEC hearing, respondent testified that the Dougherty vs. Trump Castle matter was Milita's responsibility. According to respondent,

> [d]uring the time of this, and I was trying to cover all the bases, and Milita quit. So there I am with work for more than three people and just trying to keep my finger in the dike. I asked Milita to come up and take care of [the deposition], I checked with him, he said he got there late, and frankly, I don't remember being [personally] served [with the modified court order]. But to be honest with you, so much was going on I may have been. And I gave the documentation to be taken care of because I was running behind, I wasn't well, I was on medication that was making me get in trouble with everybody, causing me problems knowing the difficulty was with the court. I don't have much of a recollection of this matter at all. I don't recall missing any court dates with Judge Himmelberger, but when the thing came to bear, I wanted the thing to be taken care of, the money. And I reviewed it with Judge Miller, who was trustee for me at the time, and he said that's what we should pay, and that he thought it was not right, and that it wasn't an ethical violation.
>
> * * *
>
> . . . so I told all the checks had to be cleared through him, and we wanted to get it taken care of, and we did, late. And now I understand not to the full amount, I understood what was being paid was sufficient. I don't remember having to be before Judge

> Himmelberger, but alot [sic] was happening to me, and not of my own devise [sic]. I thought, and frankly, I wasn't doing very good, and I was working seventy hours a week without any time off, and that's what I have to say. I can't be anymore [sic] honest than that. I didn't intentionally disregard anybody's order, I don't remember being served with it, except as I said, it was served at my office in Somers Point, I mean it could have been served on somebody else. I don't remember getting it, I really don't remember getting it.
>
> [14T 30-31]

Respondent admitted that he had written the December 28, 1990 letter to Baylinson, acknowledging receipt of the latter's earlier correspondence, and also admitted that he had not made any effort to obtain a postponement of the January 11, 1991 hearing.

The DEC found that respondent's failure to comply with the court orders had been prejudicial to the administration of justice, in violation of RPC 8.4(d).

The Varga Matter (District Docket No. I-93-09E, formerly I-91-12E)

This matter arose from respondent's representation of a matrimonial client in Pennsylvania, although he is not a member of that bar. Specifically, on July 20, 1990, respondent contacted Dolores J. Varga, the attorney for David B. Crothamel in a divorce action in the Court of Common Pleas of Delaware County, Pennsylvania. The purpose of respondent's communication with Varga was to advise her that he was Mrs. Crothamel's new attorney and to set up a meeting among both counsel and the parties to attempt to

settle the case. For reasons that are not relevant to these proceedings, such meeting never took place.

On February 15, 1991, a hearing was held before an appointed master, at which respondent and his client appeared, as well as Varga and her client. Prior to the beginning of the hearing, respondent inquired of Varga whether they could discuss settlement before the hearing. The master then left the room, whereupon settlement negotiations ensued. After the settlement negotiations proved fruitless, Varga asked respondent whether he was licensed to practice in the State of Pennsylvania. Respondent replied that he was not. He added, however, that that fact "had never stopped him from taking or settling cases in Pennsylvania before" (13T 25). He also indicated to Varga that he would sign an affidavit of consent to the divorce in his client's behalf. When Varga pointed out that Mrs. Crothamel had to sign it herself, respondent announced that he intended to sign it as her attorney-in-fact. Indeed, Exhibit G-1 purports to be an affidavit of consent signed by respondent as attorney-in-fact for Dolores Triboletti Crothamel.

According to Varga's testimony, she subsequently requested that respondent forward to her the power-of-attorney. Upon its receipt, she discovered that it was inadequate, inasmuch as it did not comply with Pennsylvania's statutory requirements. After unsuccessful requests to respondent that he provide a proper power-of-attorney, Varga wrote him a letter setting a deadline for the forwarding to her of the power-of-attorney, before she scheduled another hearing before the Master. When respondent failed to

comply with her demand, Varga scheduled another hearing for March 25, 1991. Although respondent received notice of said hearing, neither he nor his client appeared. Thereupon, the court scheduled a contempt hearing against both respondent and Mrs. Crothamel. When neither attended the hearing, the court signed an order holding respondent in contempt, assessing a fine against him and requiring him to pay counsel fees. Exhibit G-3.

At the DEC hearing, respondent conceded that he was not a member of the Pennsylvania bar. He explained, however, that his appearance in the matrimonial matter had been limited to settlement negotiations. He testified that he had informed both the Master and Varga that he was not licensed to practice law in the State of Pennsylvania and that, in the event the case did not settle, he would arrange for Pennsylvania counsel to proceed with Mrs. Crothamel's representation. Respondent also conceded that he did not write a letter to the Master notifying her that he was not admitted in the State of Pennsylvania, after he received notice of the divorce hearing.

The DEC found that respondent had improperly engaged in the practice of law in the State of Pennsylvania, in violation of RPC 5.5. The DEC rejected respondent's defense that he had not violated RPC 5.5 because his participation had been restricted to settlement negotiations. As the DEC noted in the hearing panel report, "[i]f the participation, as the respondent argues, was restricted only to settlement negotiations this was still an important function of an attorney and that the [sic] settlement

participation alone would be substantial enough to be considered as engaging in the practice of law." The DEC concluded that respondent had received multiple written notices designating him as a Pennsylvania attorney and that he had done nothing to correct this wrong impression, although he may never have explicitly represented to be a member of the Pennsylvania bar or to be appearing pro hac vice.

* * *

In sum, the Special Master and the DEC found that respondent had been guilty of a pattern of neglect in two matters, lack of diligence in two matters, failure to communicate in two matters, failure to turn over his clients' files in three matters, lack of candor toward a tribunal in one matter, lack of truthfulness in statements toward others in one matter, unauthorized practice of law in one matter and conduct prejudicial to the administration of justice in two matters.

Alleged mitigation

Respondent testified at great length and in great detail about his history of his psychological difficulties, acknowledging that they do not excuse his misconduct (10T 7). He provided information on his hospitalizations, his contempt convictions and jail term. He also testified about his two divorces and the poor relationship he has with his children, although a supplemental letter from his counsel indicates that the relationship has improved with one of

the four children. There was also testimony from respondent and others regarding the vast improvement in his physical condition since late 1992.

Respondent continues to be under stress due to a number of factors. With regard to how he handles these problems, respondent testified that, thanks to his medication, his therapy and exercise, he is able to "compartmentalize them" and that they do not "cloud [his] ability to make judgments" (10T 123).

Two specifics events addressed by respondent deserve mention. One was respondent's arrest, on January 10, 1992, for failure to appear at a pre-trial conference. When asked why that had occurred, respondent testified that he was in the middle of a jury trial and that his proctor had, in fact, so informed the court. According to respondent, the judge indicated that "that wasn't good enough" (10T 208-210). The second event was respondent's arrest following a meeting with his trustees. Respondent explained that, on the date of the arrest, he had overreacted to some of the trustees' decisions, with which he disagreed. He was aware that his was not the proper reaction to the situation (10T 66-67; See also 9T 113-116, testimony of Hunsberger, infra).

Perhaps the most important testimony in this case was offered by respondent's treating psychiatrist, Dr. Lynn Montgomery, who considers himself a specialist in mood disorders (11T 10). Dr. Montgomery began treating respondent on September 21, 1992. Dr. Montgomery provided a great deal of information about respondent's bipolar disorder and his previous and current treatment.

(Respondent's extensive medical records are in evidence as Exhibit R-35.) Dr. Montgomery also explained the term hypomanic, describing that as being "over the normal level of agitation, the level of thought racing, increased energy. . ." and explained that, when respondent appeared to be well, he was probably at a hypomanic level (11T 109).

According to Dr. Montgomery, individuals who suffer from bipolar disorder, also known as manic/depressive condition, feel "invulnerable, grandiose, invincible" when manic, and that "[m]anics typically pull off things that nobody else would have the gumption to do" (11T 29-30). Dr. Montgomery testified that, when respondent was hypomanic, he took on too many cases. He would then enter a depressed stage and be unable to carry out his work. In his opinion, the client complaints against respondent are all "consistent with somebody with this clinical picture" (11T 36, 155). Dr. Montgomery believed that the medication that respondent had previously taken since October 1989, Nardil, (11T 77, Exhibit P-57) actually complicated his condition (11T 35, R-36, R-37). (The Board noted that respondent's misconduct in these matters occurred during the time period that he was being treated with Nardil.) Dr. Montgomery testified that respondent still has some signs of irritability, although it is mostly kept at bay and will wax and wane. He is becoming progressively more stable (11T 43-44).

Dr. Montgomery opined that respondent is able to practice law. He is of the view, however, that respondent still needs time before

he is able to go back into a court room (11T 188-119). He suggested that respondent start out in non-trial "housekeeping," such as research, and that he practice with other attorneys (11T 141). Dr. Montgomery believes that respondent's prognosis is good, explaining that "good is about as good as it gets from him." He noted that, although respondent will never be symptom-free, if he is monitored and medicated, his performance would not be impeded. He stated that respondent might experience minor fluctuations, rather than the "catastrophic problems" of the past. He did not think that respondent will become "an ethics problem" again (11T 58-59). Although Dr. Montgomery acknowledged that respondent continues to be under stress from a number of factors, he did not believe that his condition should be adversely affected thereby. Dr. Montgomery was also of the opinion that stress associated with the practice of law is not a precipitator of this type of illness (11T 52-55).

There were questions raised at the ethics hearing as to the fact that respondent might have been deceiving his previous psychiatrist, Lawrence P. Clinton, M.D., who had been providing status letters to the Office of Attorney Ethics. Dr. Montgomery took issue with Dr. Clinton's reports, which indicated that respondent was doing well (11T 123). (See, i.e., Exhibit R-35, Dr. Clinton's Report, Exhibit M). In Dr. Montgomery's opinion, respondent was not doing well at that time.

A key question asked of Dr. Montgomery was whether respondent knew the difference between right and wrong. Dr. Montgomery's

opinion was that, although respondent knew the difference, in a manic condition he might have created his own reality.

Another key question was whether Dr. Montgomery had considered the protection of the public in his analysis. He replied, "Yes, I have considered that. Truthfully, if I thought that he were going to be in a situation where he wasn't medicated and wasn't properly constrained, I would consider that bad for the public. I wouldn't want him to be in that spot, not for them or him" (11T 184-185).

In addition to the testimony of Dr. Montgomery, extensive testimony was offered by Theresa Christian Hunsberger, Esq., who served as one of respondent's trustees. She testified about the financial difficulties that plagued respondent's two offices and that respondent was not collecting fees from his clients. She also pointed to the vast number of open files being handled by respondent and to the fact that respondent received new clients on a daily basis (9T 105). She testified that the practice had been going downhill because of finances and that respondent "had tons of clients" (9T 131). (Indeed, respondent explained that, in 1990 and 1991, he was accepting thirty-five new cases per week (10T 72). He acknowledged that, when he lost his law partners, his practice was too large for him to handle alone. 10T 62-63.) Hunsberger stated that respondent would sleep in his car to enable him to get to court early and worked "around the clock" (9T 110). Hunsberger also gave testimony about respondent's bankruptcy and the distribution and destruction of his files (9T 123-127).

A number of other individuals testified in respondent's behalf before the DEC. Testimony was offered by Arthur G. D'Arrigo, Sr., respondent's employer at the time of the DEC hearing. D'Arrigo, whose wife and son are attorneys, is the owner of ADCO Financial Services á a mortgage banking company that also does collection work. Respondent had been working for ADCO since December 1992 (for six months at the time of the DEC hearing). Respondent was paid $60 per day and received no benefits (3T 93). With regard to respondent's work at ADCO, D'Arrigo stated:

> [h]e immediately jumped on this thing to where he went out and solicited certain physicians in town that he knew, and it was a matter of 30 days or so that the floodgates started pouring in. Physicians that we had never been able to attract as customers of Adco were now sending us all of their accounts, either all of their accounts á á [respondent] probably has á á I don't have the exact number but he probably has produced in new cases or new files for us to collect approximately a million and a half dollars' worth of new business for us.
> [3T 87].

D'Arrigo is aware of respondent's psychiatric difficulties. (Respondent's counsel submitted a letter to the Board, informing that, for financial reasons, respondent was no longer employed by D'Arrigo. Respondent had obtained other employment at substantially the same salary.)

Of some interest was the testimony of Charles Hamidy, who was represented by respondent in 1982. He testified that Robert Litwack, Esq., the grievant in one of the above matters, represented and is the son-in-law of the opposing party in the 1982 case. Hamidy testified that he heard Litwack say he "will get

[respondent] if it takes the rest of [his] life" (8T 90). Hamidy testified that respondent was not disturbed by Litwack's comment (8T 91). Litwack denied becoming angry with respondent during Hamidy's case and could not recall the statement that Hamidy attributed to him.

The Special Master heard the testimony of a large number of respondent's friends, including Police Sergeant Gary Denby, of Bridgeton. These witnesses testified generally about their belief in respondent's competence as an attorney and that they thought that respondent had had a problem but that he appeared to be better.

Stacey Beck, respondent's daughter and Janice Bradley, his secretary for twenty-one years, also testified before the Special Master. Both testified as to the confusion and disorganization in respondent's office.

The Special Master also heard from Father E. Thomas Higgons, who testified as to the amount of pro bono work respondent has done for the church and for individuals in the community (4T 29).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the Special Master that respondent is guilty of unethical conduct is fully supported by clear and convincing evidence.

There is no question that respondent is guilty of a pattern of neglect, lack of diligence, failure to communicate, failure to turn

over his clients' files, lack of candor toward a tribunal, lack of truthfulness in statements toward others, unauthorized practice of law and conduct prejudicial to the administration of justice. Given respondent's extensive ethics history (two private reprimands, a public reprimand, a three-month suspension and his temporary suspensions), it is difficult to view the current matters in a vacuum.

In the past, conduct similar to that of respondent has resulted in a lengthy term of suspension or disbarment. See, i.e., In re Mintz, 126 N.J. 484 (1992) (two-year suspension for an attorney who engaged in a pattern of neglect and abandonment in four cases, failed to maintain a bona fide office and failed to cooperate with the disciplinary system); In re Hurwitz, 135 N.J. 181 (1994) (three-year suspension for an attorney who was guilty of a pattern of neglect and failure to communicate in five cases, failure to abide by a client's decision, failure to protect a client's interest and failure to cooperate with the disciplinary authorities); In re Clark, 134 N.J. 522 (1994) (disbarment for abandoning clients and displaying egregious indifference for their well-being in six matters. The attorney also impeded the administration of justice and failed to appear before the DEC or the Board) and In re Spagnoli, 115 N.J. 504 (1989) (disbarment for accepting retainers from fourteen clients over a three-year period without any intention of representing them. Further, Spagnoli lied to the court in order to excuse his failure to appear and failed to

cooperate with the disciplinary authorities. Spagnoli had received a prior public reprimand).

Respondent's misconduct does not rise to the level of that seen in Spagnoli and Clark, where disbarment was required. There is a missing element here of venality or willful disregard for clients' welfare. In addition, a key factor in each of those cases was the attorney's complete failure to cooperate with disciplinary authorities.

The issue remains, however, of the appropriate quantum of discipline for this respondent. The Board would like to believe that respondent's prior encounters with the ethics system were a result of his psychological disorder. In his report, the Special Master noted that "[i]t is difficult as a layperson to evaluate the mitigation defense as presented by Dr. Montgomery." He added that "[w]hile Dr. Montgomery's testimony is credible and convincing in terms of the clinical diagnosis of manic depression or bipolarity, the broadness of purported explanations as applied to the conduct of [respondent] has limits in terms of mitigation it is respectfully suggested" (Special Master's Report at 24-25).

The Board agrees that respondent's illness does not excuse his misconduct. It does, however, help to explain it. Given respondent's apparent lack of venality, the fact that he practiced law without incident for twenty-five years before he received his first private reprimand in 1988 and the encouraging testimony of Dr. Montgomery, the Board deems it is worth giving respondent one more opportunity. Accordingly, the Board, by a requisite majority,

recommends that respondent be suspended for a period of three years. The suspension is to run prospectively. During that time, respondent should undergo regular examination by a psychiatrist. Prior to reinstatement, psychiatric proof of his fitness to return to the practice of law should be submitted. In addition, following reinstatement respondent should not be permitted to appear in court until he obtains the Court's approval.

The Board is of the opinion that a proctor must supervise respondent's practice. Of great concern to the Board, however, is the fact that respondent's previous trusteeship did not work well. When asked about this, Dr. Montgomery explained that respondent had also needed his medication and the proctorship would not work alone (11T57). The Board, therefore, recommends a two-year proctorship and cautions respondent that it is unable to make these safeguards work for him. That responsibility is solely respondent's.

Three members dissented, believing that respondent should be disbarred. One member recused herself, one did not participate.

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

Dated: September 21, 1994

By: _____
James R. Zazzali, Esq.
Disciplinary Review Board