SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-218

IN THE MATTER OF :
:
ANTHONY HARRIS, :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 15, 1992

Decided: September 16, 1992

Joann G. Eyler appeared on behalf of the District VB Ethics Committee.

Respondent appeared pro se.

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

This disciplinary proceeding arose from a complaint charging respondent with ethics improprieties in ten different matters.[1]

The DEC, through a Special Master, held hearings on April 22 and April 23, 1992. Respondent filed an answer to the formal

[1] In addition to the ten matters now before the Board, there are five other matters on which the District VB Ethics Committee (DEC) has conducted hearings: Walton (failure to advise client of fee schedule); District VB Fee Arbitration Committee, docketed as an ethics matter (acceptance of retainer followed by performance so ineffective as to warrant return of entire fee and referral to ethics committee); Bethel (failure to communicate); Ali 'Khak (failure to communicate); and Montanez (failure to communicate and lack of diligence). The DEC has not yet issued a hearing panel report.

To date, the Client Protection Fund has paid out $2,800 in claims filed by some of the grievants in the within matters ($2,600 to Torres and $200 to Neal). Two claims are pending ($11,000 to Gonzalez and $250 to Clemente).

complaint, but did not appear at the DEC hearings.[2]

Respondent was admitted to the New Jersey bar in 1984. He maintained an office for the practice of law in Newark, New Jersey. By Order dated July 31, 1991, the New Jersey Supreme Court temporarily suspended respondent. The suspension remains in effect as of this date.

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THE WARREN MATTER

In September 1987, respondent was retained by Roberta Warren and her sister, Viola Hill, to represent them in connection with the purchase of a house in Orange, New Jersey, from the Pilgrim Baptist Development Corporation. At the closing, respondent received a $425 fee. Pursuant to specific written instructions by both Chicago Title Insurance Company (Chicago Title), the company who issued the title commitment, and City National Bank of New Jersey, the lender, respondent was not authorized to close the loan until certain conditions were satisfied. The conditions included the payment of the outstanding taxes on the property, proof of reinstatement of the seller as a corporation (its charter had been revoked), and proof of payment of franchise taxes by the seller. Exhibits P-38, P-39 and P-52. Respondent understood his responsibilities as closing attorney. In fact, Exhibit P-38 bears the following handwritten notation by respondent: "[a]ll tax

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[2] Respondent appeared at the pre-trial conference, at which time he and the presenter signed a stipulation. Exhibit P-55.

arrears including 1st quarter will be paid. A.W.H."

The closing took place on February 10, 1988. The RESPA Statement reflects that the unpaid taxes on the property were $390.99 for 1987 and $2,079.29 for the first quarter of 1980, or a total of $2,470,28. Attachment to Exhibit P-16. Respondent admitted responsibility for the payment of the taxes. He also acknowledged that, at the closing, the sum of $2,470.28 had been set aside for the payment of the taxes. Stipulation, Exhibit P-55. In his answer, however, respondent contended that he had not collected enough monies from the closing proceeds to pay the taxes. This was news to Warren, who testified at the DEC hearing that respondent had not informed her, at the closing, that there were insufficient funds to satisfy all obligations. T4-23-1992 141. It was Warren's understanding that "[she] had given him all the money he needed to make sure it was a good closing and everything was handled as it should have been." T4-23-1992 146.

In any event, the real estate taxes, as well as the water and sewer bills, were not paid from the closing proceeds. In May 1991, Chicago Title received a claim from the lender, stemming from respondent's failure to pay the outstanding taxes at the closing, in violation of the lender's closing instructions. Chicago Title had issued a "closing protection letter," also known as an "approved attorney letter," guaranteeing reimbursement to the lender for any failure on respondent's part to comply with the closing instructions. Because the lender had paid approximately $5,000 in back taxes, it was seeking reimbursement from Chicago

Title, in conformance with the latter's promise. Upon receipt of this claim, Gary Urquhart, Esq., Senior Claims Attorney for Chicago Title, telephoned respondent's office on two occasions. His calls were never returned. In view of its inability to contact respondent, Chicago Title was forced to reimburse $5,000 to the lender for the payment of the outstanding taxes on the property. In addition, as Urquhart testified at the DEC hearing, respondent's non-compliance with the above-noted specific closing instructions failed to produce a marketable title.

Early in 1990, Warren and Hill discovered that their house was up for tax sale. A trip to City Hall confirmed that the taxes on their property had not been paid. For a period of eight months -- from January 1990 through late August 1990 -- Warren telephoned respondent's office to determine why the taxes had not been paid and why the title had not been insured. Although she left countless messages with respondent's secretary, her calls were never returned. It was only after she contacted Chicago Title that she was apprised of respondent's failure to satisfy the outstanding tax obligations. As of the DEC hearing of April 23, 1992 -- more than four years after the closing -- Warren still had not received a reply from respondent.

* * *

The Special Master found that respondent's handling of the Warren closing constituted gross negligence and also a pattern of neglect "in the handling of legal matters generally," when viewed

in conjunction with the other counts of the complaint. The Special Master found further that respondent had failed to deliver funds that a third person was entitled to receive; had failed to communicate with his client; and had engaged in conduct involving dishonesty, deceit or misrepresentation, by not paying the tax liens, all in violation of RPC 1.1(a) and (b), 1.3, 1.4(a), 1.15(b) and 8.4(c).[2]

THE RAMIREZ MATTER

In August 1990, John Freddy Ramirez retained respondent to file a bankruptcy petition. When respondent quoted a $750 legal fee, Ramirez initially paid him $200. Approximately one month later, Ramirez sent respondent a $100 money order. Ramirez also gave respondent a list of all his creditors and the relevant bills.

In late October 1990, Ramirez received a letter from respondent informing him that the petition had been filed. Thereafter, Ramirez tried to obtain copies of his file and to discuss the matter with respondent, to no avail. Ramirez, who testified by telephone at the DEC hearing, explained that he wanted to know how many creditors respondent had listed on the petition. He was able to talk to respondent on only one occasion. At that time, he made an appointment to see respondent the following week. A few days later, respondent's secretary telephoned Ramirez

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[2] The record is insufficient to allow a conclusion that respondent collected enough funds at closing but misused them, in violation of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

demanding payment of the $450 balance of the total fee of $750. The secretary told Ramirez that he had to bring cash, inasmuch as the office did not accept checks. On November 7, 1990, Ramirez stopped at respondent's office to give him $300 in cash. He gave the money to the secretary, as respondent was not in the office at that time. In fact, in his answer, respondent asserted that "[o]n or about November 7, 1990, Harris' office was closed because he was being treated for substance abuse in North Carolina . . . ." Answer at 5.

Subsequently, Ramirez went to the courthouse to find out if the bankruptcy petition had been filed. He was informed that it had. He was also advised that the bankruptcy hearing would take place on December 14, 1990. He then went to respondent's office "four or five times a day for one month," but found no one there. Ramirez left numerous messages on the office door and on the answering machine. Two or three weeks later, respondent's phone was disconnected. On subsequent trips to the office, Ramirez discovered that his messages were still on the door.

On December 14, the day of the bankruptcy hearing, Ramirez went to Court alone and acted pro se. On March 19, 1991, he was discharged from bankruptcy. After the discharge, Ramirez experienced problems with three different creditors who had not been listed on the petition, despite the fact that Ramirez had given their names to respondent. Ramirez was left with no choice but to make installment payments to those creditors.

In March or April 1991, respondent telephoned Ramirez. He

sounded apologetic. He informed Ramirez that he had had a "terrible personal problem" that he could not explain to Ramirez and asked if he could talk to Ramirez. By then, Ramirez had already filed a complaint with the DEC. Ramirez told respondent to contact the DEC. When respondent insisted that he see Ramirez, they scheduled an appointment for May 11, 1991. At that time, Ramirez apprised respondent of the anxiety that he had been forced to endure during his bankruptcy proceeding and upon his discovery that three of his creditors had not been listed on the petition. Appearing contrite, respondent assured Ramirez that he would file an amendment to the petition to include those three creditors. Respondent also promised Ramirez that he would refund him a portion of his fee. Respondent neither filed the amendment to the petition nor returned any monies to Ramirez. As Ramirez testified at the DEC hearing, he only saw respondent once thereafter, when respondent had dinner at a hotel where Ramirez was working and asked Ramirez for a discount on a bottle of champagne.

* * *

The Special Master found that respondent had abandoned his client. The Special Master also found that respondent's "negligence/neglect in failing to include all creditors in the bankruptcy petition and not appearing in Court demonstrate[d] a pattern of neglect in Respondent's handling of legal matters," in violation of RPC 1.1(a) and (b). Special Master's Decision at 19.

THE KEENE MATTER

The third count of the complaint alleges that, in March 1990, Yvonne Keene retained Harris to represent her in connection with an injury sustained while at work at Rutgers University. It further alleges that respondent sent Keene for various medical evaluations and that, by letter of September 21, 1990, he advised her that she was to have a "final evaluation" on October 17, 1990; following that letter, however, Keene did not receive any further correspondence or other contacts from respondent; Keene then attempted to contact respondent at his office, but was not successful. The complaint charged respondent with violation of RPC 1.1(a), for abandoning his client after he agreed to represent her, and RPC 1.1(b), when his conduct was taken in concert with other counts of the complaint.

In his answer, respondent admitted that he had been retained by Keene and that he had sent her for numerous evaluations. He denied that he had abandoned Keene, alleging that he was "unavailable and his office was closed during November and part of December 1990." The stipulation reached between respondent and the presenter states only that "[i]n March 1990 Keene retained Respondent to represent her for injuries sustained while at work at Rutgers University." Exhibit P-55 at 3.

Keene did not testify at the DEC hearing. The presenter informed the Special Master that, although Keene had promised to testify at the hearings of April 22 and April 23, 1992, she had failed to appear. The presenter advised the Special Master that

"[a]t this point, I don't believe that we can proceed any further with Ms. Keene's grievance and she does not seem to be interested enough in pursuing her grievance, despite my trying to accommodate her schedule." T4-23-1992 153.

Nonetheless, the Special Master found that respondent's conduct in the Keene matter had been unethical when he abandoned her case and severed contact with her, in violation of RPC 1.1(a) and (b). The Special Master concluded that respondent's actions in that matter were "virtually identical to the way he handled his clients Ramirez, Gonzalez, Torres, Colon, and Clemente." Special Master's Decision at 20. The Special Master determined that there was sufficient evidence in the record to allow a finding of unethical conduct on the part of respondent. This determination was based on paragraph 3 of the pre-trial order, which provided that

> [d]ocuments attached to the investigative report, Respondent's Answer, and described in Schedule A attached (or copies), may be admitted into evidence without proof of authenticity, subject only to an objection of relevancy.
> [Exhibit O to Special Master's Decision]

In light of that provision, the Special Master considered Keene's letter of January 15, 1991 to the DEC, complaining of her

> inability to contact or substantiate the whereabouts of the attorney representing me in an accident . . . . The attorney named Anthony Harris has been representing me since March of 1990 and the last correspondence from him was dated September 21, 1990. All of my efforts to contact Mr. Harris through phone and personal visits have been fruitless as his office is no longer located at 50 Park Place .

> . . and I have been left with no forwarding phone number or address.
> [Exhibit P-20]

The Special Master concluded that respondent had abandoned Keene and had failed to notify her of his change of address.

THE GONZALEZ MATTER

In 1984, Ramon Gonzalez was incarcerated in Essex County jail on charges of first degree aggravated sexual assault and first degree kidnapping. His bail had been set at $100,000, with no cash alternative. In October 1989, his mother, Maria Gonzalez, retained respondent to obtain her son's release on bail. According to Mrs. Gonzalez, respondent assured her that, if she paid him $11,000, he "would take [her] son out . . . he would get bail." Consistent with this understanding, Mrs. Gonzalez initially gave respondent $800 and, thereafter, $9,800 in cash, which she had to borrow from her sister.[3] Respondent gave Mrs. Gonzalez a handwritten receipt that read as follows:

> I, Anthony W. Harris, received $9,800 (Nine Thousand Eight Hundred Dollars) from Maria Gonzalez to apply to the Bail of Ramon Gonzalez on October 17, 1989.
>
> /s/Anthony W. Harris
> [Exhibit P-2]

Subsequently, Mrs. Gonzalez gave respondent $250 and then another $250 when respondent appeared at her house asking for $500.

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[3] A review of respondent's trust and business account records by an OAE investigator revealed that respondent had not deposited the $9,800 sum in either his trust or business account during October 1989. Exhibit P-12.

It was Mrs. Gonzalez' testimony that she went to court three times. On each occasion, however, respondent did not appear. Ultimately, the court recommended that she retain another attorney. In June 1989, the Honorable Felix Martino, the judge then handling the matter, tried to reach respondent, unsuccessfully. A public defender was then appointed to represent Ramon. Respondent never returned any monies to Mrs. Gonzalez, whose son remains in jail.

In his answer, respondent contended that, initially, Mrs. Gonzalez had not paid him any monies for a bail reduction hearing. After a first hearing, the judge refused to reduce the bail. At this juncture, respondent informed Mrs. Gonzalez of the outcome of the hearing and also requested a retainer, if she wished him to proceed. Still according to respondent, Mrs. Gonzalez agreed that the $9,800 sum that she had already given respondent could be applied toward the retainer, which he had not deposited into his trust account because he "had all intentions of paying a Bondsman so the money was kept in his office safe." Answer at 8. At first, the bail was reduced to a $50,000 surety bond wristlet, with no cash alternative. The court subsequently increased the bond to $100,000, with no cash alternative, upon application of the prosecutor's office. Respondent alleged that, "[a]t all times during the above, Harris was under the impression that all monies at this point were to be applied to his retainer being that no other monies had been tendered him by Gonzalez." Answer at 8. He further stated in his answer that, from June to August 1991, he was in Portugal. He denied that his failure to remit the bail

money to Mrs. Gonzalez, when it was obvious that bail could not be made for her son, constituted a violation of RPC 8.4(c), as charged in the formal complaint. It was his belief that "all bail monies [had been] converted a [sic] retainer because no other monies had been paid for the extensive services to rendered [sic] with regard to the Gonzalez matter. It was further agreed between the parties, i.e. Gonzalez and Harris, that all monies paid were to be applied to Harris' retainer." Answer at 9. He also denied that he had abandoned his client. He contended that he was unable to represent Ramon Gonzalez because, upon his return from Portugal, his license had been suspended.

At the DEC hearing, Mrs. Gonzalez vigorously testified that the monies given to respondent were to be applied toward bail, not toward a retainer. In response to several questions posed by the presenter as to whether the monies had been given to respondent to represent her son, she replied:

> I told you, Anthony Harris, I didn't want an attorney to defend my son 'cause he promised me he was going to take him out. I should give him the money to take him out, not to defend him.
>
> [T4-22-1992 46]

The Special Master agreed with Mrs. Gonzalez. He concluded that the handwritten receipt corroborated her testimony because it read, in part, "to apply to the Bail of Ramon Gonzalez." The Special Master found that respondent's conduct had been grossly negligent, had evidenced a pattern of neglect, and had been dishonest and deceitful because respondent had neither obtained Ramon Gonzalez' release nor returned the money that had been

specifically given to him for the bail. RPC 1.1(a) and (b) and RPC 8.4(c).[4]

THE TORRES MATTER

In 1989, Orlando Torres retained respondent to represent him in connection with a personal injury claim, at which time they signed a retainer agreement. After Torres was examined by several doctors recommended by respondent, Torres attempted to obtain information about the status of the matter. He stopped by respondent's office on several occasions, but respondent was never there. Respondent's secretary told Torres to return on a particular date. Although Torres did so, respondent was not at his office on that day.

In July 1990, when Torres was able to reach respondent by telephone, Torres complained about the delay in the resolution of his case. Respondent then instructed Torres to stop by the office to pick up a check, ostensibly for Torres' share of the settlement proceeds. The check, drawn on respondent's business account, was for $2,000. Torres deposited the check into his bank account. Two months later, when Torres was in need of the funds and tried to withdraw them from his account, he learned from his bank that respondent's check had bounced. Torres attempted to contact respondent, but was unable to locate him. Torres went to

[4] The Special Master could have properly found that respondent's failure to deposit the $9,800 in his business or in his trust account violated RPC 1.15.

respondent's office on several occasions, only to find the office door closed. When he inquired of respondent's whereabouts, he was told by respondent's former neighbors that respondent had moved without leaving an address.

Sometime thereafter, Torres saw respondent on the streets of Newark. It appears that respondent had been looking for Torres in order to discuss the problem with the check. Respondent gave Torres a $500 check from a family member's checking account. At that time, Torres had already filed a claim for reimbursement with the Client Protection Fund. Torres then cashed the check and remitted the $500 sum to the Client Protection Fund, who had not only approved Torres' claim for reimbursement but, in fact, had paid him. Torres never saw respondent again after that street episode.

In his answer, respondent denied that he owed Torres any monies. He alleged that, after he was apprised of the mistake with the $2,000 check, he directed his secretary to give cash to Torres immediately. Respondent further alleged that the payment was made in cash at Torres' insistence, because of the problems they had encountered in the past. Answer at 10-11.

* * *

The Special Master found that respondent had failed to hold Torres' share of the settlement separately from his own property, that he had acted with dishonesty when he issued a bad check, and

that he had failed to communicate with his client, in violation of RPC 1.15(a) and (b), RPC 8.4(c) and RPC 1.4(a).

THE BENSILE MATTER

In August or September 1989, Ade Bensile retained respondent to represent him in connection with a purchase of a house in Newark, New Jersey. Respondent charged Bensile a $650 legal fee.

The closing of title took place on November 15, 1989. According to the RESPA Statement, respondent deducted approximately $2,100 from the proceeds due the seller for the payment of taxes, water and sewer. Exhibit P-27. Nevertheless, two weeks after the closing, the City of Newark shut off the water supply at Bensile's house, claiming that charges were due. In order to have the water supply restored, Bensile was forced to pay the charges out of his own pocket. He then went to respondent's office to attempt to clear up this matter. At that time, respondent gave him a check for an amount sufficient to pay the water charges only. Respondent assured Bensile that he had already paid the property taxes, in the approximate amount of $650. Respondent's reimbursement check to Bensile was returned for insufficient funds, however. Bensile once again went to respondent's office and was instructed to redeposit the check, which he did. This time the check cleared.

In January 1990, Bensile received a letter from the City of Newark informing him that the real estate taxes remained outstanding. Bensile then had to pay $650 for the taxes. In

November 1990, Bensile was told by a friend that his name had appeared in the newspapers as a delinquent taxpayer. More specifically, a tax sale for Bensile's house had been scheduled for December 6, 1990. When Bensile telephoned respondent, the latter once again assured Bensile that the taxes had been paid. Because, however, the City of Newark had informed Bensile otherwise, a trip to the City's office revealed that respondent's check for the payment of the taxes had bounced. This check bore a May 2, 1990 date, six months after the closing of title. Respondent had lied to Bensile that the taxes had been paid in December 1990.

Thereafter, Bensile went back to respondent's office many times and left numerous messages on his answering machine. His attempts to contact respondent were fruitless. Ultimately, Bensile paid a total of $699.49 to the City of Newark for taxes and interest, in addition to a $25 fee for respondent's bounced check. To date, respondent has not repaid those monies to Bensile.

In the stipulation, respondent conceded that the amounts for unpaid taxes, water and sewer had been deducted from the closing proceeds. He also admitted that his check to the City of Newark, in the amount of $650, had been returned for insufficient funds. In his answer, however, respondent blamed his transgressions on "substance abuse and disability."

* * *

The Special Master found that respondent's misconduct in the Bensile matter constituted gross negligence, in violation of RPC

1.1(a). The Special Master also found that respondent's failure to pay the taxes violated RPC 1.15(a) and (b), and that his delay in writing a check to the City of Newark for taxes and then writing a bad check constituted dishonest conduct, in violation of RPC 8.4(c).

THE COLON MATTER

In July 1990, Soriano Colon retained respondent to represent him in connection with a personal injury claim. At that time, respondent instructed Colon to send him all medical bills incurred by reason of the injury. Colon did so. Subsequently, Colon could not get in touch with respondent. He went to respondent's office on numerous occasions, not only to determine the status of his matter but also to ask for the return of his file. He found the office closed. In fact, there was a notice on the wall that read "Don't ask for Mr. Harris. We don't know anything about Mr. Harris." Also, respondent's phone had been disconnected.

In his answer, respondent denied any impropriety in the handling of the Colon matter. He contended that Colon had not responded to any correspondence sent to him and that, had Colon come to his office, he would have been able to obtain his file.

* * *

The Special Master found that respondent had abandoned Colon and deprived him of the opportunity to have his claim adjudicated. The Special Master also found that respondent failed to communicate

with his client, all in violation of RPC 1.1(a) and (b), and RPC 1.4(a).

THE DISTRICT V-A FEE ARBITRATION COMMITTEE MATTER

In October 1990, Albert A. Neal retained respondent to represent him in an immigration matter, at which time he paid respondent $200. A week later, Neal telephoned respondent's office, but found that the number had been disconnected. He also went to respondent's office, which he found closed. Thereupon, Neal filed a claim with the District V-A Fee Arbitration Committee.

On June 19, 1991, the committee awarded Neal $200. Respondent did not appear at the hearing. To date, respondent has not refunded the money to Neal. In fact, the Client Protection Fund has reimbursed the $200 sum to Neal.

The fee arbitration determination stated that

> [t]he attorney never did any work on the matter. According to the Client, within one week from his payment of money to the Attorney, the Attorney's telephone was shut off and his office was closed. From this it appears that the Attorney must have known he would not be able to serve the Client, but took the $200 deposit anyway. Based on that, it is recommended that the appropriate Ethics Committee be notified of the situation.
> [Exhibit P-30]

* * *

The Special Master found that respondent had accepted a $200 cash payment from Neal and agreed to perform legal services in

connection with the immigration matter. Nevertheless, respondent did nothing to advance his client's interest. Within a week, respondent's telephone had been disconnected, his office had been closed, and his whereabouts were unknown. The Special Master concluded that respondent's conduct violated RPC 1.1(a) and (b), RPC 1.3, RPC. 1.4(a), and RPC 8.4(c).

THE CLEMENTE MATTER

In October 1990, Felipe Clemente, a corrections officer, retained respondent to represent him at a hearing to modify a 1986 alimony award. Clemente paid respondent a $200 retainer at that time. Clemente had received a notice from the court that he owed $18,000 to $19,000 in alimony arrearages. At their initial consultation, respondent took note of the hearing date set forth by the court.

Thereafter, Clemente was unable to contact respondent. For a period of two weeks, Clemente telephoned respondent's office, obtaining only a busy signal. Clemente then decided to go to respondent's office, which he found closed. When he asked the building manager about respondent's whereabouts, he was told that respondent had been locked out of his office for non-payment of rent. He was informed that respondent had left no forwarding address. Also, respondent's telephone had been disconnected.

According to Clemente, he had no other alternative but to appear in court alone on the scheduled hearing date. When he

tried to explain to the judge that his attorney had made himself unavailable, the judge ordered that Clemente be handcuffed immediately and locked up in jail.

Allowed to make one telephone call, Clemente contacted his fiancée, also a law enforcement officer. Through her efforts, he was released later on that evening. After his release from jail, Clemente attempted to find respondent, but was unsuccessful. Sometime thereafter, Clemente saw respondent at a stationery store in Newark. Clemente expressed his dissatisfaction with respondent's services and complained to him about the ordeal that he had been forced to face, including his incarceration. Respondent instructed Clemente to come to his new office to obtain a refund of his $200 retainer. Clemente did so. When Clemente deposited the check into his account, he discovered that respondent's bank account had insufficient funds to cover the check. Clemente redeposited the check, but it was dishonored again. All the while, Clemente was being charged a fee for the return of the check.

Clemente telephoned respondent's office and left a message with respondent's secretary. When Clemente telephoned respondent's office at a later time, respondent's secretary told Clemente that she had given the message to respondent. Respondent never contacted Clemente again.

Thereafter, Clemente went to the courthouse to find out if respondent had filed a motion in his behalf. He was informed that the motion had been filed. Eventually, the motion was denied

because, as explained in the judge's letter to Clemente,

> [t]he Court will not accept hearsay certifications by attorneys of what their clients may have told them . . . and will not entertain an application for modification for support without a current Case information Statement and a Case Information Statement or other evidence of financial circumstances at the time the order for support was entered. [Exhibit P-34]

Clemente then retained another attorney, who was able to obtain a reduction in the alimony amount.

In his answer, respondent denied that Clemente had attempted to contact him prior to the court hearing; denied that he was responsible for Clemente's incarceration; denied knowledge that his check had been returned; denied that he failed to represent Clemente; and denied that he failed to give Clemente a refund. According to respondent, Clemente made an appointment to receive a refund, but never appeared at his office.

* * *

The Special Master found that respondent had neglected the Clemente matter and abandoned his client. The Special Master also found that respondent failed to act with reasonable diligence and promptness, failed to keep his client informed of the status of his matter, and displayed dishonesty when he issued a bad check, in violation of RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a), and RPC 8.4(c).

FAILURE TO COOPERATE WITH THE DISCIPLINARY SYSTEM

The tenth count of the complaint charged respondent with failure to reply to grievances and to supply the DEC with files, books and accounts records, and failure to comply with orders of the Supreme Court to produce files, books and records. In his answer, respondent admitted the allegations contained in this count of the complaint.

The chronology of the events was summarized in the Special Master's Report:

> On May 1, 1991, Deputy Ethics Counsel, John J. Janasie of the OAE wrote Respondent demanding that he produce books, records and files on May 8, 1991 at the OAE office in Trenton (Exh. P-4 at 7A-8A).
>
> Respondent did not produce his books, records and files.
>
> The OAE petitioned the Supreme Court to temporarily suspend Respondent. By Order dated June 6, 1991, the request for suspension was denied without prejudice and Respondent was directed to provide the OAE with all documentation required in connection with the ethics proceedings against him within 45 days (Exh. P-5 at 12A).
>
> Respondent did not comply with the Supreme Court's Order of June 6, 1991. The OAE filed another application for immediate temporary suspension. By Order dated July 17, 1991, the application was denied without prejudice to renewal by the OAE should Respondent fail to comply with the Order of June 7, 1991. The OAE was directed to take protective action with respect to Respondent's files, records and assets (P-6 at 13A).
>
> By Order dated July 31, 1991, the Supreme Court temporarily suspended Respondent and directed him to show cause on September 10, 1991, why the temporary suspension and restraints should not continue pending final

disposition of any ethics proceedings against him (Exh. P-7 at 14A).

Prior to the return date of September 10, 1991, Respondent consented to a continuation of his temporary suspension. In re Harris, 126 N.J. 215 (1991).
[Special Master's Report at 31]

* * *

The Special Master concluded that respondent had ignored the DEC's requests for information, as well as the OAE's demands and the Court's orders for the production of documents, books and records, in violation of RPC 8.1(b).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the Special Master's conclusions that respondent was guilty of unethical conduct are fully supported by the record.

Respondent displayed a prolonged pattern of serious misconduct in ten matters. Specifically, respondent exhibited gross neglect and failure to communicate with his clients in seven matters and lack of diligence in three; he engaged in conduct involving dishonesty, deceit or misrepresent in six matters; he failed to safekeep property of clients or third parties in five matters; he abandoned his clients in three matters; he failed to cooperate with the DEC in all matters; and he failed to comply with the OAE's requests and the Court's orders for the production of records,

books or documents. Furthermore, his conduct demonstrated a pattern of neglect in handling legal matters generally. His actions violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 8.4(c), RPC 1.15 and RPC 8.1(b). The record also raises the specter of knowing misappropriation in the Warren and Bensile matters (where respondent failed to pay taxes and other outstanding bills, notwithstanding the fact that equivalent funds were segregated at the closing of title for the payment of those obligations), in the Gonzalez matter (where he never returned the $9,800 bail monies to Mrs. Gonzalez), and in the Torres matter (where the $2,000 check given to the client was returned for insufficient funds).

Respondent's conduct in these ten matters was extremely serious. It demonstrated a callous indifference to his clients' welfare, to the judicial system, and to the disciplinary process. Where the attorney's conduct has risen to this grievous level, the Court has ordered disbarment.

Indeed, recently, in a similar case, the Court determined that the attorney's extensive pattern of misconduct warranted nothing short of disbarment. In re Spagnoli, 115 N.J. 504(1989). In that case, the attorney was found guilty of gross negligence in twelve matters, evidenced a pattern of neglect in six matters, failed to take initial action by not preparing or filing any papers in seven matters, failed to appear in court in three matters, misrepresented to the client that the papers had been filed or that the delay in preparing the documents had been caused by his adversary in three

matters, lied to the court when he requested an adjournment on the basis that his client was out of state in one matter, failed to communicate with his clients in eight matters, refused to return the clients' files in eight matters, ignored a court order providing for the return of the file in one matter, and refused to refund unearned retainers in at least two matters. The attorney also failed to cooperate with the ethics proceedings, by not filing answers to eight of the fifteen complaints instituted against him, not appearing at five DEC hearings covering nine matters, and not appearing at the Board hearing. The Court agreed with the Board's conclusion that the attorney had abandoned and defrauded his clients by accepting their money, promising to take legal action on their behalf, and inducing them to rely on his promises, all the while never intending to take any steps to protect the clients' interests, to the clients' great detriment. Id. at 517.

Here, too, the record demonstrates that respondent took his clients' money without any intention whatsoever to protect their property and, in some cases, their liberty. Like Spagnoli, this respondent abandoned and defrauded his clients. The emotional and financial hardship that he inflicted on his clients cannot be forgiven. In re Dailey, 87 N.J. 583,594(1981). His actions also reflected dishonesty and a deficiency in character that cannot be tolerated.

There is some mention in the record that respondent was suffering from alcohol and drug abuse, purportedly the root of all his transgressionss. However, with the exception of a letter from

George C. Debnam, M.D., certifying that respondent had been treated for alcoholism from November through December 1990, and a letter from a substance abuse counselor stating that respondent had appeared for individual counseling twice a week from November 1 through December 8, 1990, there is no evidence in the record that explains respondent's serious ethics violations in any way. There are no medical or psychiatric reports showing that respondent's alleged substance abuse caused any substantial cognitive impairment so as to mitigate his egregious misconduct.

Moreover, it is a well-settled principle that an attorney's addiction to illegal drugs may not be considered as excuse or mitigation in disciplinary matters. In re Terner, 120 N.J. 706(1990); In re Stein, 97 N.J. 550(1984).

Respondent urged the Board to consider discipline short of disbarment for his serious ethics offenses. The Board is unable to do so. Cognizant of its duty to protect the public from those attorneys who do not conform to the high standards demanded of the profession, the Board must recommend that respondent be disbarred. The Board does so unanimously. Three members did not participate.

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

Dated: 9/16/92

By: Raymond R. Trombadore
Chair
Disciplinary Review Board