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DISTRICT VIII ETHICS COMMITTEE, :
 : DOCKET NO: VIII-05-008E
Complainant, :
 :
vs. : DISCIPLINARY ACTION
 :
HOWARD A. BACHMAN, ESQ. :
 : COMPLAINT
Respondent, :

District VIII Ethics Committee by way of complaint against
respondent, says:

GENERAL ALLEGATIONS

1. Howard Bachman (respondent) was admitted to the Bar of this State in 1985.
2. Respondent maintains law offices at 14 Woodward Drive, Old Bridge, Middlesex County, New Jersey.

**FIRST COUNT
(Tito Acevedo)**

1. In or about July of 2002, respondent was retained by Tito Acevedo (hereafter "Acevedo") of 41 Third Street, West Keansburg, New Jersey, on his behalf in a personal injury action arising out of a motorcycle accident.
2. Acevedo communicated with respondent, and with respondent's associate Ira Senoff, Esq., between 2002 and October of 2004. During that time period, litigation was commenced by the filing of a Complaint, and discovery materials were exchanged.

3. On or about October 8, 2004, Acevedo came to learn that Mr. Senoff was no longer employed at respondent's firm. Acevedo sent a letter to the respondent, on or about October 12, 2004, directing the respondent to "cease and desist" any further work on the file. In that letter, Acevedo also requested that his file be forwarded to John Anzalone, Esq., of the law firm of Wilentz, Goldman & Spitzer.

4. Acevedo met with Mr. Anzalone, who indicated that he wanted to review the respondent's entire file before deciding whether or not to accept the case. It is alleged that despite several requests, and payment of copying costs to the respondent on or about November 29, 2004, Mr. Anzalone was only provided with the complete file when Acevedo delivered it to him personally in January of 2005.

5. During the intervening three months, it is alleged that no further work was done on the file, prejudicing Acevedo's position in the case. Further, while respondent was still the attorney of record on the file, plaintiff's (Acevedo's) expert report was not timely served upon counsel for the defendant. A motion was filed to bar the report, which it is alleged that respondent did not oppose. An order was entered by the court, barring introduction of the plaintiffs expert report, thus creating significant prejudice to the plaintiffs case.

6. Acevedo appeared personally at the respondent's law office on or about January 11, 2005, in order to obtain the file, so that it could be delivered to Mr. Anzalone. Acevedo was required to sign two documents at the respondent's office; one of the documents was a

Substitution of Attorney. At no time did Acevedo meet with the respondent, or any other attorney in respondent's law firm. At no time was the legal effect of the document that he was made to sign explained to Acevedo.

7. As a result of the delay, Mr. Anzalone ultimately declined representation, and Acevedo was left with no choice but to attend a court-mandated arbitration hearing pro se. The case was "no caused", and Acevedo did not file for a trial de novo.

8. Respondent continued to advertise his work in the area of personal injury law, while indicating in writing that only Mr. Senoff was participating in personal injury matters, which is a knowingly false statement. This conduct constitutes a violation of RPC 8.4(c)

9. Respondent's failure to act with reasonable diligence in representing his client constituted a violation of RPC 1.3. His failure to keep his client reasonably informed of the status of his matter constituted a violation of RPC 1.4(b).

10. Respondent's failure to properly terminate representation, and his failure to take steps to protect the client's interests while doing so, constituted a violation of RPC 1.16(d).

WHEREFORE, respondent should be disciplined.

DISTRICT VIII ETHICS COMMITTEE

/s/ Ellen F. Schwartz, Esq.
Committee Member

DAVID B. RUBIN, P.C.
Attorney At Law
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P. O. Box 4579
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(732) 767-0440
Attorney for Respondent Howard A. Bachman, Esq.

DISTRICT VIII ETHICS COMMITTEE,	:	
	:	DOCKET NO: VIII-05-008E
Complainant,	:	
	:	
vs.	:	DISCIPLINARY ACTION
	:	
HOWARD A. BACHMAN, ESQ.	:	
	:	VERIFIED ANSWER
Respondent,	:	

Respondent, Howard A. Bachman, by way of answer to the Complaint herein, says:

GENERAL ALLEGATIONS

1. The allegations contained in paragraphs 1 and 2 are admitted.

FIRST COUNT

1. Respondent admits that Goldstein & Bachman, the firm of which he is a principal, was engaged by Tito Acevedo on or about July 29, 2002; however, respondent contends that Acevedo was a personal friend of Ira Senoff, Esq., an associate of the firm at the time, and that all communications to, from and on behalf of the client were by or with Senoff, not respondent. Respondent also avers that Senoff handled other legal matters for Acevedo while he was associated with respondent's firm.

2. Respondent admits that the client communicated with Senoff during the time periods indicated, but not with respondent personally. From a review of the file after the fact, it appears that litigation was commenced by Senoff and discovery materials were exchanged. While the complaint purportedly was signed by respondent, in fact it was not. Based on his review of the file after the fact, it is respondent's belief that Senoff signed respondent's name to both the complaint and the civil case information statement without respondent's knowledge or actual authority. For the two years that the matter remained an open file with respondent's firm, the matter was handled exclusively by Senoff, with no involvement by respondent.

3. Respondent can neither admit nor deny when Acevedo first learned that Senoff was either leaving the firm or had left, but admits that on or about November 1, 2004, he first became aware of a letter, bearing a date of October 12, 2004, addressed to Senoff, advising him that John Anzalone, Esq., of Wilentz, Goldman & Spitzer, was his "new attorney," instructing Senoff to "cease and desist any and all work" on the matter in question, and directing him to forward the entire file to Anzalone's office. See Exhibit A, annexed hereto.

4. Respondent can neither admit nor deny what transpired between Acevedo and Anzalone but, with respect to Anzalone's communications with respondent, denies that there were "several requests." On November 9, 2004, eight days following receipt of Acevedo's aforesaid, and after having had the file photocopied and returned to him by PostNet copying service on November 8, 2004, respondent wrote to

Anzalone requesting instructions on how Anzalone wished the file copies to be transmitted to his office, and requesting reimbursement of the photocopy expense. See Exhibits B and C, annexed hereto.

Anzalone did not respond until his letter dated November 29, 2004, forwarding reimbursement for the photocopy expense and requesting that the file be forwarded to him "as soon as possible." See Exhibit D, annexed hereto. Respondent represents that this letter was not received by him until December 8, 2004. Thus, the first communication from Anzalone to respondent was not received by respondent until nearly two months after respondent received Acevedo's letter, and several weeks after advising Anzalone that the file copies were ready for delivery to his office. A week later, by letter dated December 15, 2004, respondent caused the copies of the file to be hand-delivered to Anzalone's office by New Jersey Lawyers Service. Documentation furnished by New Jersey Lawyers Service reflects that respondent's letter and accompanying photocopies were received by Anzalone's office on December 17, 2004, at 1:01 p.m. See Exhibits E and F, annexed hereto.

5. In reviewing the file after the fact, respondent learned that Senoff had contacted a professional engineer, John Desh Associates, in August 2004, as liability was a contested issue in the case. Desh required a fee for his report, with an initial retainer of \$1,400.00, towards a total projected expense of \$3,500.00. The firm's position was that Acevedo was required to defray these expenses. Acevedo never provided the funds, and Desh was never hired.

Prior to delivering the complete file to Anzalone's office, respondent received a motion to bar Acevedo's liability expert, in or about the first week of December, 2004. Respondent forwarded a copy of that motion to Anzalone under letter of December 9, 2004. Respondent, by then having realized that no substitution of attorney had yet been filed by Anzalone, also notified adversary counsel of the position taken by Acevedo concerning performance of further services by respondent's firm. As a result, adversary counsel sought to adjourn the motion for two weeks-.

On December 17, 2004, Anzalone wrote to respondent, claiming that he had not yet received the file copies he had requested, and advising that he would not respond to the pending motion nor otherwise enter an appearance in the case. See Exhibit G, annexed hereto. Respondent has no knowledge of when the letter was prepared by Anzalone that day, but reiterates that the file copies, in fact, arrived at Anzalone's office at 1:01 p.m. that day.

Respondent then filed a motion to be relieved as counsel on December 23, 2004, after speaking to Judge Gilroy's law clerk, "Bill," who advised that this was the proper course of action.

Respondent subsequently received a letter from Anzalone, dated January 4, 2005, denying that he had received the entire file, stating that he would not be responding to the pending motion, and advising that he was no longer interested in "evaluating" the case. See Exhibit H, annexed hereto. Respondent wrote to Acevedo on January 7, 2005, reminding him of the pending motion to be relieved as counsel, and

reminding him of a January 14, 2005 arbitration hearing. See Exhibit I, annexed hereto. Respondent also wrote to Anzalone the same day, refuting Anzalone's account of what had transpired, and denying responsibility for any delay that had occurred. See Exhibit J, annexed hereto.

6. Once Anzalone advised respondent that he was not going to be handling the file, and after respondent had filed his motion to be relieved as counsel, respondent re-copied the file for Acevedo in early January 2005. Respondent attempted to follow up with Acevedo by telephone repeatedly during this time frame, but Acevedo failed to return numerous telephone calls. Eventually, Acevedo did contact respondent's office, and it was arranged through respondent's secretary that Acevedo's file would be re-copied, that he would retrieve the copies from respondent's office, and that he would execute a substitution of attorney at the time he took possession of his file. See Exhibits J, K and L, annexed hereto. Respondent admits that neither he nor any other attorney in his office met with Acevedo when he picked up the file and signed the substitution of attorney.

The motion to bar plaintiff's expert testimony ultimately was heard and granted on January 7, 2005. Respondent's motion to be relieved as counsel was denied on January 28, 2005 as moot, because a substitution of attorney had been signed by Acevedo, pro se, on January 11, 2005.

7. Respondent is unable to admit or deny Anzalone's state of mind at the time he declined to continue representing Acevedo, but

respondent denies that he was responsible for any unreasonable delay in the transition of the file from his office to Anzalone's.

Respondent has no first-hand knowledge of what transpired in Acevedo's action following Acevedo's execution of the substitution of attorney.

8. Respondent's firm does market its practice through advertising generated under the direction of respondent's partner, Mark Goldstein, Esq. Although personal injury work is listed as one of a number of practice areas, the firm's advertising clearly communicates that the primary field of concentration is divorce and family law. Over respondent's twenty years of practice, however, he primarily devoted his activities to personal injury matters from 1985 through 1997. He has handled numerous contested cases in that field, and has tried numerous matters to conclusion before juries.

At the time of the events in question, and continuing to the present, the firm continues to handle primarily matrimonial matters. The workload is divided such that respondent and his partner, Mark Goldstein each work with an associate. The firm's large matrimonial caseload is handled by both respondent and Goldstein, but respondent also handles the majority of any municipal court matters and some civil litigation. The few personal injury files that the firm had as of late 2004 were being handled by Senoff. To the best of respondent's knowledge, all of the firm's personal injury clients at that time were Senoff's friends or acquaintances.

In view of respondent's experience in the field of personal injury law, he denies that the firm's organizational decision to

allocate files in the fashion described above was any reflection on his own abilities, or that he in any way misrepresented his or his firm's credentials.

9. Respondent denies that he failed to act with reasonable diligence, or that he failed to keep Acevedo reasonably informed of the status of his matter.

By way of background, Senoff gave notice toward the end of September 2004 that he was leaving the firm to form his own solo practice. He represented to respondent that he would remain employed through October 29, 2004, so that the firm could resolve any issues concerning files that he was taking with him, respondent could be apprised of the status of the files that Senoff was then handling, and Senoff could complete his remaining work for the firm.

Respondent was scheduled to take vacation from October 12, 2004 through October 15, 2004. On October 4, 2004, Senoff abruptly left the office, stating that he would not be returning. He failed to provide respondent with explanatory information for the files that he was leaving, departed with a pending trial date in another matter on October 11, 2004 and, generally, left the firm extremely short-handed. Respondent's immediate attention at the time was devoted to resolving the issue of the trial date on the other-matter, which involved another friend of Senoff's. Respondent was able to find substitute counsel and have the trial adjourned.

On November 1, 2004, respondent received Acevedo's letter dated October 12, 2004, advising that respondent was to cease working on the

matter in question in this ethics proceeding. From respondent's reading of the letter, he was of the belief that Anzalone was, in fact, already Acevedo's "new lawyer," as the letter stated. Although respondent has no specific knowledge, he was under the general impression at the time that Anzalone was a friend or acquaintance of Senoff's, and has knowledge that other files of Senoff's had been transferred to Anzalone shortly beforehand including, by way of example, a matter involving Priscilla Chin, another friend of Senoff's, which was transferred to Anzalone on September 29, 2004.

Respondent expected that Anzalone, having taken over the other file cited above, be handling Acevedo's file as well, and that a substitution of attorney would be filed promptly. In hindsight, respondent acknowledges that no substitution of attorney was ever filed by Anzalone, but based on Acevedo's representation that Anzalone was already his "new lawyer," respondent assumed that Anzalone would be taking appropriate steps to protect Acevedo's interests. It was not until the motion to bar expert testimony was filed in December 2004 that respondent became consciously aware that no substitution had been filed, and that Anzalone was refusing to enter an appearance in the matter. It appears undisputed that Acevedo was made aware of the motion to bar expert testimony in a timely manner, and thus was kept reasonably aware of developments in his case during time frame alleged in the complaint. It further appears that in light of Acevedo's professed unwillingness and/or inability to engage an expert, the outcome of the motion was a foregone conclusion.

WHEREFORE, respondent, Howard A. Bachman, requests that the charges be dismissed.

DAVID B. RUBIN, P.C.

Attorney for Respondent
By: /s/ David B. Rubin

Dated: August 12, 2005

VERIFICATION

1. I am the respondent in the above matter.

2. I have read the within answer and certify that the factual statements made therein are true.

3. I understand that if any of these statements are willfully false, I am subject to punishment.

/s/ HOWARD A. BACHMAN

Dated: August 11, 2005