

Office of Attorney Ethics
Supreme Court of New Jersey
P.O. Box 963
Trenton, NJ 08625
(609) 530-4008
Trial Counsel: Nitza I. Blasini, Esq.

OFFICE OF ATTORNEY ETHICS,	:	
	:	DOCKET NO: XIV-00-302E
Complainant,	:	
	:	DISCIPLINARY ACTION
vs.	:	
	:	COMPLAINT
ERIC J. CLAYMAN, ESQ.	:	
	:	Complex Misconduct
Respondent,	:	R. 1:20-4

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey, P.O. Box 963, Trenton, New Jersey 08625, by way of complaint against respondent, Eric J. Clayman, Esq., says that:

GENERAL ALLEGATIONS

Eric J. Clayman, Esq., hereinafter referred to as "respondent," was admitted to the practice of law in the State of New Jersey in 1985. Respondent is a partner in the law firm of Jenkins & Clayman with offices located at 412 White Horse Pike, Audubon, New Jersey 08106. The firm specializes in Chapter 7 and 13 bankruptcy matters.

COUNT ONE

*Conduct Involving Dishonesty, Deceit,
Fraud and Misrepresentation in Violation of
RPC 8.4(c); Making a False Statement
of Material Fact to a Third Party, in
Violation of RPC 4.1(a)(1) and (2); Violating the RPC'S
Through the Acts of Another in Violation of RPC 8.4(a);
and Making a False Statement of Material Fact
To a Tribunal In Violation of RPC 3.3*

1. In October 1998, Henry J. Lubaczewski (Lubaczewski) retained respondent to represent him in a bankruptcy matter.

2. The primary reason Lubaczewski sought legal advice from respondent was a large debt, \$404,000, he owed to Advest, Inc. (Advest), his former employer. The debt was forgivable as long as Lubaczewski remained employed with Advest for a certain period of time.

3. Lubaczewski left his employment with Advest after a short period of time and went back to work at his former employer, A.G. Edwards as a stockbroker. Therefore, the entire loan, \$404,000.00, was due. Lubaczewski was unable to repay the loan.

4. Respondent advised Lubaczewski to file for protection under Chapter 13 of the United States Bankruptcy Code. On or about October 9, 1998, respondent filed the Chapter 13 bankruptcy on behalf of his client.

5. By his own admission, respondent is an experienced bankruptcy attorney. In fact, his practice primarily deals with representing consumers and small businesses in Chapter 7 and Chapter 13 proceedings. He has been certified by the American Board of Certification in Consumer Bankruptcy Law.

6. Notwithstanding his expertise in this area, respondent counseled Lubaczewski to file a Chapter 13 bankruptcy petition, knowing he was not eligible to do so because the Advest debt alone exceeded the statutory limitations.

7. In preparing the bankruptcy petition, respondent intentionally made misrepresentations and/or omissions regarding Lubaczewski's financial status.

8. In Schedule F [Creditors Holding Unsecured Non-Priority Debts] Respondent listed only four unsecured creditors: 1) Advest Inc., which was listed as zero 2) Lane & Mittendeit LLP, which was listed at an estimated amount of \$5,000.00, 3) Lubaczewski's ex-wife, Margaret Lubaczewski, was listed as zero, and 4) Steven Deringer, Esq., which was listed at an estimated amount of \$1,000.00. Respondent listed Lubaczewski's total unsecured debt at \$6,000.00. Exhibit 1.

9. Respondent failed to list on Schedule F two credit card debts, one to Fleet, and the other to Fleet Visa, despite Lubaczewski having a balance due for both creditors at the time of filing the petition. Exhibit 2, page 16. [Transcript of Motion for Sanctions, dated October 15, 1999.]

10. In failing to list the two credit card debts, the accounts remained open for Lubaczewski's use. In fact, Lubaczewski continued to use the credit cards after the petition was filed.

11. In addition, respondent failed to disclose that Lubaczewski owed his ex-wife \$330,000.00, despite there having been a written agreement which set forth in detail Lubaczewski's obligations to his ex-wife. Exhibit 1 and Exhibit 2, pages 11-12. [Transcript of Motion for Sanctions, dated October 25, 1999.]

12. In response to question 7 of the Statement of Financial Affairs, respondent failed to disclose Lubaczewski's \$17,000.00 gift to his daughter and \$10,000.00 gift to his son. Exhibit 1 and Exhibit 2, page 27.

13. Also, in response to question 8 of the Statement of Financial Affairs, respondent failed to indicate the amount of Lubaczewski's gambling losses; \$3,500.00. Exhibit 1.

14. In addition to the aforementioned misrepresentations, respondent misstated the value of Lubaczewski's stocks and interest, falsely stated that Lubaczewski owned no furs or jewelry, misstated the balance in the checking account and did not accurately state Lubaczewski's monthly bills.

15. Respondent's conduct as described above-constitutes a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, and misrepresentation); RPC 4.1(a)(1) and (2) (making a false statement of material fact to a third person, and failing to disclose a material fact to a third person when disclosure was necessary to avoid assisting a criminal or fraudulent act by his client); RPC 3.3(a)(1), (2) and (5) (making a false statement of material fact to a tribunal); and RPC 8.4(a) violating the RPC's through the acts of another.

WHEREFORE, respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

Dated: October 20, 2003

By: /s/ David E. Johnson, Jr.