

**SUPREME COURT OF NEW JERSEY
DISTRICT ETHICS COMMITTEE**

**Ocean County
District IIIA**



Steven Secare, Esq.
Secretary to the Committee
Secare, & Hensel
16 Madison Avenue, Building 1
Toms River, NJ 08753
(732) 349-2800

Jerome Turnbach, Esq., Chair
Linda Rehrer, Esq., Vice Chair

ATTORNEYS:

Richard Archer, Esq.
Bradley D. Billhimer, Esq.
Joel A. Davies, Esq.
Brian J. DiStefano, Esq.
Margarie M. Herlihy, Esq.
Glenn Kassman, Esq.
Eugenia Lynch, Esq.
S. Karl Mohel, Esq.
Valter Must, Esq.
Micheal T. Nolan, Jr., Esq.
Michael R. Polulak, Esq.
Ronald Prusck, Esq.
Robert J. Ritacco, Esq.
Matthew Sage, Esq.
Karin Sage, Esq.
Abigale Stolfe, Esq.
Terrance L. Turnbach, Esq.
Vecna Vallyathan, Esq.

PUBLIC MEMBERS:

Roseanne Feimer
Dr. Kenneth M. Kerr
Theresa Kuyl
Joan E. Ruane, RN.

RESERVED MEMBERS:

Benjamin H. Mabie, Esq.
Lynne A. Dunn, Esq.
Laura Halm, Esq.

March 22, 2016

**REGULAR AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mark A. Bernstein, Esq.
1814 Route 70 East - Suite 270
Cherry Hill, NJ 08003

**RE: Ethics Committee v. Mark A. Bernstein, Esq.
Docket No: IIIA-2012-0014E**

Dear Mr. Bernstein:

In accordance with *R. 1:20-4(d)*, I serve upon you a complaint. You are required to file your written, verified answer within 21 days of receipt. *R. 1:20-4(e)*. The original and two (2) copies of your answer are to be filed directly with me. One copy is to be filed with the vice chair, whose name and address are as follows:

**Jerome J. Turnbach, Esq., Vice-Chair
2 Hooper Avenue - Suite 6A
Toms River, NJ 08753**

One copy is to be filed with the Office of Attorney Ethics, P.O. Box 963, Trenton, New Jersey 08625. A copy of the cover letter transmitting the Answer (without enclosure) should be sent to the OAE Statewide Coordinator at the same address.

In filing your answer, you must follow *N.J. Court Rule 1:20-4(e)*, which requires a written answer, verified in the form set forth, and the following:

- (1) a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint;
- (2) all affirmative defenses, including all claims of mental or physical disability, if any, and whether it is alleged to be causally related to the offense charged;
- (3) any mitigating circumstances;
- (4) a request for a hearing either on the charges or in mitigation; and
- (5) any constitutional challenges to the proceedings.

You are advised that, while the burden of proof by clear and convincing evidence is on disciplinary authorities to establish ethical misconduct, the burden of going forward on all properly raised affirmative defenses and mitigating factors, including all claims of mental and physical disability, if any, and whether such defenses or claims are causally related to the offense charged, is on you. The burden of proof for all medical defenses is clear and convincing evidence. *R. 1:20-6(c)(2)(B)*.

Please note that you must personally verify your answer by attaching and signing the following form to that document.

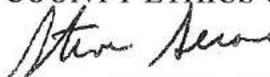
<u>Verification of Answer</u>	
I, _____, am the Respondent in the within disciplinary action and hereby certify as follows:	
1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.	
2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.	
Date: _____	_____ Signature

YOU ARE CAUTIONED THAT FAILURE TO FILE A TIMELY ANSWER WILL CONSTITUTE AN ADMISSION OF THE CHARGES. SUCH FAILURE MAY ALSO RESULT IN YOUR IMMEDIATE TEMPORARY SUSPENSION FROM PRACTICE. IN EITHER EVENT, NO FURTHER HEARING NEED BE HELD AND THE ENTIRE RECORD IN THIS MATTER WILL BE CERTIFIED DIRECTLY TO THE DISCIPLINARY REVIEW BOARD FOR IMPOSITION OF SANCTION, ALL PURSUANT TO R.1:20-6(c)(1) AND R.1:20-4(f).

This matter will be prosecuted by **Bradley Billhimer, Esq.**, as **presenter**, before a three-member panel of this District Ethics Committee. Pursuant to *R.1:20-4(g)*, you are entitled to have an attorney present on your behalf at the forthcoming hearing. If you are unable to retain an attorney by reason of indigency, you may make application to the Assignment Judge of your vicinage for the appointment of counsel based upon a certification pursuant to *R.1:20-4(g)*. Such application must be made within 14 days after service of the complaint on written notice to the vice chair or special ethics master. In addition, you are entitled, pursuant to *R.1:20-7(i)*, to the issuance of subpoenas necessary and relevant to your defense. This application should be directed to the hearing panel chair or special ethics master at least two weeks prior to the trial date. A failure to request production of subpoenas or assignment of counsel will result in a waiver. Furthermore, failure to secure counsel forthwith will **not** be accepted by the hearing panel or special ethics master as a reason for adjournment.

If you have any questions regarding this matter, you should promptly communicate with me or with the presenter.

Very truly yours,
OCEAN COUNTY ETHICS COMMITTEE



STEVEN SECARE, Secretary
District IIIA Ethics Committee

SS/kj

Enclosure

cc: Jerome Turnbach, Esq., Vice Chair (w/out encl.)
Bradley Billhimer, Esq., Presenter (w/out encl.)
Justin Medal, Grievant (w/enc.)
Andrea Fonseca-Roman, District Liaison, OAE (w/enc.-original)
William Ziff, Esq., OAE (w/o enc.)

Bradley D. Billhimer, Esq.,
LAW OFFICES OF BRADLEY D. BILLHIMER, LLC.
Two Hooper Avenue
Toms River, New Jersey 08753
Tel: 732-914-2001 Fax: 732-914-2020
Attorney ID: 017422000
SUPERIOR COURT OF NEW JERSEY

DISTRICT IIIA ETHICS COMMITTEE
DOCKET NO. IIIA-2012-0014E

DISTRICT IIIA ETHICS COMMITTEE, :
 :
Complainant, : Disciplinary Action
 :
v. :
 : **COMPLAINT**
MARK A. BERNSTEIN, Esq., :
 :
Respondent. :
 :

District IIIA Ethics Committee, by way of Complaint against Respondent, says:

ALLEGATIONS COMMON TO ALL COUNTS

1. Mark A. Bernstein, Esq. ("Respondent") was admitted to the bar of the State in 1997.
2. Respondent maintains law offices at 1814 Route 70 East, Suite 270, Cherry Hill, New Jersey
3. Respondent represented Justin Medal (hereafter "Grievant") with regard to criminal charges in Camden County Superior Court in 2011.

4. Respondent was present and was Grievant's attorney of record when Grievant entered a guilty plea before the Honorable Samuel D. Natal, J.S.C., in Camden County Superior Court on September 26, 2011.

5. On the same date, September 26, 2011, Judge Natal advised Respondent and Grievant that sentencing would occur on January 13, 2012.

6. On January 13, 2012, Respondent failed to appear for Grievant's sentencing. Grievant was present and was taken into custody.

7. On January 20, 2012, Respondent failed to appear for Grievant's sentencing.

8. On February 3, 2012, Respondent failed to appear for Grievant's sentencing.

9. On February 17, 2012, Grievant was represented by the Office of the Public Defender and sentenced by Judge Natal.

FIRST COUNT

10. The allegations set forth in paragraphs 1 to 14 are hereby repeated and realleged as if set forth at length herein.

16. RPC 1.3 requires an attorney to act with reasonable diligence and promptness in representing a client.

17. Respondent admits to failing to appear at least two separate sentencing hearings and did not act diligently in representing and appearing in court with Grievant. This conduct constitutes unethical conduct under RPC 1.3.

SECOND COUNT

18. The allegations set forth in paragraphs 1 to 17 are hereby repeated and realleged as if set forth at length herein.

19. Respondent failed to advise the Grievant that he was seeking to adjourn the January 13, 2012 sentencing date.

20. RPC 1.4(b) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with the reasonable requests for information.

21. Respondent's failure to advise the Grievant of an adjournment request constitutes violations of 1.4(b).

THIRD COUNT

22. The allegations set forth in paragraphs 1 to 21 are hereby repeated and realleged as if set forth at length herein.

23. Respondent did not communicate his fee to Grievant in writing before or within a reasonable time after commencing representation of Grievant.

24. R.P.C. 1.5(b) requires Respondent to communicate his fee to Grievant in writing before or within a reasonable time after commencing representation of Grievant.

FOURTH COUNT

27. The allegations set forth in paragraphs 1 to 24 are hereby repeated and realleged as if set forth at length herein.

28. Respondent failed to adopt and maintain reasonable efforts to ensure his secretary's conduct would be compatible with his professional obligations.

29. Respondent does not recall his secretary's last name.

30. Respondent failed to ensure that his secretary could coordinate court dates.

31. R.P.C. 5.3(a) requires Respondent to adopt and maintain reasonable efforts to ensure his secretary's conduct would be compatible with his professional obligations.

FIFTH COUNT

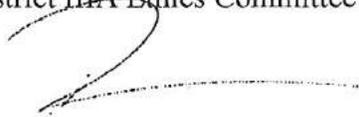
31. The allegations set forth in paragraphs 1 to 31 are hereby repeated and realleged as if set forth at length herein.

32. Respondent engaged in professional misconduct by failing to appear in court with his client on three separate occasions. This conduct is prejudicial to the administration of justice.

33. Pursuant to R.P.C. 8.4(d) it is professional misconduct to engage in in conduct that is prejudicial to the administration of justice.

WHEREFORE, Respondent should be disciplined pursuant to Rule 8.4(a).

District IIIA Ethics Committee



Bradley D. Billhimer, Investigator

Date: March 21, 2016