SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-303

IN THE MATTER OF :
:
MORRIS STARKMAN :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: October 17, 1996

Decided: December 4, 1996

F.J. Fernandez-Vina appeared on behalf of the District IV Ethics Committee.

Carl Poplar 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 discipline filed by the District IV Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.7 (conflict of interest) and RPC 1.9 (conflict of interest; former client).

Respondent was admitted to the New Jersey bar in 1972 and maintains an office in Cherry Hill, New Jersey. In 1992, respondent received a private reprimand for passively commingling trust and personal funds and for failing to disburse to clients $15,329.69 in interest earned on trust funds.

The DEC and respondent entered into a stipulation of facts at the hearing. The facts are set forth, in relevant part, as follows:

On April 7, 1990, Juan Luna ("Grievant") was operating a motor vehicle that was involved in an accident. With him were his wife, Karla Corrales, and his brother, Adrian Luna. A few weeks later, the three met with respondent to discuss the accident. All three individuals retained respondent to represent them with respect to any claims they may have had as a result of the accident. Respondent opened a file for each of the three clients and began collecting necessary information to prosecute claims in what respondent determined to be a "tort threshold" automobile injury case.

Shortly before the expiration of the two-year statute of limitations, in or about March 1992, respondent reviewed the three files and determined that grievant did not have a viable claim because of substantial liability issues and grievant's inability to meet the verbal threshold requirements necessary to file suit. Contemporaneously with the file review, grievant was called into respondent's office and told (through an interpreter, as grievant did not speak English) that (1) respondent would not be filing suit on his behalf, only on behalf of Adrian and Karla; and (2) grievant would be named a defendant in that suit. Grievant acknowledged that he understood the issues presented to him at the meeting, but claimed that he did not consent to the proposed course of action.

Indeed, some two weeks prior to the running of the statute of limitations, respondent filed suit on behalf of Adrian and Karla, naming grievant as a defendant. The record indicates that efforts (made by whom is unclear) to obtain another attorney to press grievant's claim so close to the expiration of the statute of limitations were unsuccessful.

Approximately twelve months after the filing of the lawsuit against grievant, respondent signed a substitution of attorney, naming the law firm of Rakoski & Ross, P.C. as attorneys for

plaintiffs, Adrian and Karla.

* * *

The DEC found, by clear and convincing evidence, that respondent had violated RPC 1.7 (conflict of interest) by filing a lawsuit against grievant, but declined to find a violation of RPC 1.9 (conflict of interest; former client).

* * *

Following a de novo of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In Opinion 156, 92 N.J.L.J. 481 (1969), the Supreme Court's Advisory Committee on Professional Ethics ("ACPE") interpreted the applicability of a Supreme Court directive regarding a potential conflict of interest where an attorney represents both the driver and passenger in an automobile negligence case. The directive, set forth at 91 N.J.L.J. (1968), states that an attorney should not represent both the driver of an automobile and the passenger in an accident case, unless there is a legal bar to the passenger's suit against the driver, as, for example, where they are husband and wife, unemancipated child and parent, or employees of the same employer and the accident occurred in the course of their employment.

The ACPE again visited the issue of this conflict of interest in Opinion 188, 93 N.J.L.J. 789 (1970). The ACPE held that consent and waiver do not permit an attorney to represent two or more

parties who may have potential claims against one another arising out of the same transaction. Even when the driver and passenger have agreed that they do not intend to sue one another for damages suffered in the collision and are willing to sign appropriate waivers, the proposed representation is improper, notwithstanding consent.

The facts in the instant matter fall squarely within the absolute prohibition enunciated in Opinion 188. By virtue of his dual representation of driver and passengers, respondent violated ACPE Opinions 156 and 188.

Generally, in cases involving a conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. In re Berkowitz, 136 N.J. 134 (1994); In re Carney, 138 N.J. 43 (1994). Because respondent was fully cooperative with the DEC and caused no apparent damage to any of the individuals involved in the matter, the Board unanimously determined to impose a reprimand.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/4/96

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board