SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-322

IN THE MATTER OF :
:
EVAN LEVOW :
:
AN ATTORNEY AT LAW :

Decision

Argued: November 21, 2002

Decided: April 15, 2003

John Morelli appeared on behalf of the District IV Ethics Committee.

Carl D. 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 us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 3.4(g) (a lawyer shall not present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter) and N.J. Advisory Comm. on Professional Ethics Opinion 347, 99 N.J.L.J. 715 (1976).

Respondent was admitted to the New Jersey bar in 1991. He maintains an office for the practice of law in Cherry Hill, Camden County. He has no history of discipline.

Respondent represented Michele and Nicholas Sucarato in a personal injury claim against Drs. Neil Robinson (the grievant herein), Alan Schoenfeld, David R. Grossman and Michael J. Spedick, as well as Ocean Eye Institute. The claim involved allegations of assault, battery, harassment and employment discrimination. Ms. Sucarato alleged the following: while employed by Ocean Eye Institute, she was continually harassed by her employers to have a mole removed from her neck; she was forced to submit to a surgical procedure by Dr. Robinson to remove the mole; proper sterilization procedures were not followed; the tissue removed was thrown away, rather than sent for a pathology examination; and an infection developed at the surgical site.

On or about November 8, 1999, respondent sent a letter to Dr. Robinson and his partners setting out Ms. Sucarato's allegations and seeking $3,500,000 in settlement of the claim. Respondent's letter stated, in pertinent part:

> The issues in this matter are numerous: sexual harassment, physical and emotional assault, medical malpractice, intentional assault, negligent assault, intentional infliction of emotional distress, and criminal assault....
>
> If I do not hear from you or your representative within 14 days from the date of this letter, my clients have directed me to contact all relevant and proper authorities, including, but not limited to all relevant medical licensing boards. My clients have further directed me to contact all relevant press sources. A law suit will be filed immediately, as well.
>
> Failure to contact me within this time period will result in the above action as well as a withdrawal of the settlement demand. The law suit that will be filed will include a demand for punitive damages, in addition to compensatory damages. Any settlement discussions that may occur during the pendency of the litigation will be for amounts well in excess of the $3,500,000.00 current demand.
>
> [Exhibit P-3]

The doctors did not contact respondent within the specified time period.

In or about December 1999, Ms. Sucarato filed a criminal complaint against Dr. Robinson in Dover Township Municipal Court. Respondent testified that he had advised Ms. Sucarato not to file criminal charges because that proceeding could negatively affect the civil case.[1] On the day of the probable cause hearing, respondent appeared in court with the Sucaratos and requested a continuance to enable them to retain other counsel regarding the criminal matter.

The court dismissed the criminal charges after the Sucaratos failed to appear at a subsequent probable cause hearing. Respondent had terminated his representation of the Sucaratos prior to that hearing date. The Sucaratos did not pursue a civil suit.

As to the November 8, 1999 letter, respondent testified that Ms. Sucarato had been quite upset when she communicated with him and that he had believed her statements about the within events. Respondent testified further that he had no intentions of filing criminal charges against Dr. Robinson or his partners and did not mean his letter to be read as a threat. According to respondent, he expected that the letter would wind up in the hands of an attorney representing Dr. Robinson and his colleagues. Respondent was aware, when he drafted the letter, that it was a violation of the ethics rules to threaten criminal proceedings to gain an advantage in a civil matter.

Dr. Robinson testified below. He stated that he perceived respondent's November 8, 1999 letter as a threat to file criminal charges if he did not agree to settle the matter. Dr. Robinson thought that respondent was representing the Sucaratos at the municipal

[1] Ms. Sucarato admitted that respondent advised her that filing a criminal complaint could complicate or delay the proceedings in the civil matter.

court hearing. He testified that respondent had advised the court that the Sucaratos needed to retain an attorney for the criminal proceeding and that he, respondent, was not prepared to question Dr. Robinson's witnesses.

Six character witnesses appeared on respondent's behalf. Each one testified that respondent had a reputation for honesty and fair dealing with adversaries. Although the witnesses had a general knowledge of the allegations against respondent, they were not familiar with the November 8, 1999 letter itself. Exhibit R-1 is a collection of letters submitted on respondent's behalf, each attesting to his good character.

The complaint charged respondent with a violation of RPC 3.4(g) and N.J. Advisory Comm. on Professional Ethics Opinion 347, 99 N.J.L.J. 715 (1976) ("Opinion 347").

* * *

The DEC determined that respondent violated RPC 3.4(g) and Opinion 347. The DEC noted that respondent's November 8, 1999 letter specifically referred to "criminal assault" as one of the potential wrongful acts by Dr. Robinson. The letter also threatened to "contact all relevant and proper authorities, including, but not limited to all relevant medical licensing boards." The DEC noted that respondent's threat was followed by a demand for $3,500,000 in settlement. The DEC, thus, concluded that respondent "participated in presenting, through his appearance in the Dover Township Municipal Court and threatened to present criminal charges, through the transmittal of the November 8, 1999 correspondence, to obtain an improper advantage in a civil matter." The DEC recommended a reprimand.

* * *

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent's November 8, 1999 letter violated Opinion 347 and RPC 3.4(g). The letter specifically mentioned "criminal assault" and stated that respondent had been directed by his clients to contact "all relevant and proper authorities." A reasonable reading of those words would lead to the conclusion that either the police or the Prosecutor's Office was included in that list of authorities. Respondent's argument that he expected that the letter would quickly be turned over to an attorney is without merit. Faced with the prospect of criminal charges, the recipients of the letter could have been compelled to settle the civil matter to avoid the criminal or professional disciplinary proceedings.

That respondent acted unethically at the probable cause hearing is not so clear, however. He contended that he was not representing the Sucaratos and that, after he learned that Dr. Robinson had brought witnesses and that the prosecutor did not intend to take an active role in the case, he spoke on their behalf only to obtain an adjournment to allow them to retain counsel. Dr. Robinson recalled that respondent made that statement to the court. It cannot be said that, in requesting a continuance, respondent participated in presenting the criminal charges. We, therefore, did not find any impropriety in this regard.

Discipline for violation of RPC 3.4(g) has ranged from an admonition to a term of suspension. See, e.g., In the Matter of Mitchell J. Kassoff, Docket No. DRB 96-182 (1996) (admonition where attorney, after being involved in a car accident, sent a letter to the other driver indicating his intent to file a criminal complaint against him for assault; the letter was sent the same day that the attorney received a letter from the other driver's insurance company denying his damage claim); In the Matter of Christopher Howard, Docket No. DRB 95-214 (1995) (admonition where attorney, who represented one shareholder of a corporation in a dispute with another shareholder, sent a letter to the adversary shareholder threatening to file a criminal complaint for unlawful conversion if he did not return the client's personal property); In re McDermott, 142 N.J. 634 (1995) (reprimand where attorney filed criminal charges for theft of services against a client and her parents after the client stopped payment on a check for legal fees; the charges were dismissed on motion of the prosecutor, who contended that the claim was civil, not criminal, in nature); In re Dworkin, 16 N.J. 455 (1954) (one-year suspension where attorney, on behalf of a client, sent a letter threatening criminal proceedings against an individual who apparently had forged his signature on the client's check, unless the individual reimbursed the client and paid the attorney's legal fee of $100).

Here, respondent's misconduct did not have the element of self-interest of Kassoff. In addition, respondent might have been expressing his outrage at the allegations raised by Ms. Sucarato. While that may tend to mitigate his misconduct, it does not excuse it.

We noted that a number of individuals, through letters and testimony, attested to respondent's good character and reputation. In addition, the Assistant Executive Director and Skills and Methods Course Director, Institute for Continuing Legal Education, advised that respondent has previously volunteered his time to serve as a co-instructor in the course on civil trial preparation. According to one of the witnesses, respondent also addresses students at Rutgers Law School about the legal profession and legal ethics.

Four members determined that, despite the mitigating factors here, respondent's conduct was sufficiently serious to warrant a reprimand. Three members dissented, believing that an admonition is sufficient discipline for respondent's conduct. Two members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Evan M. Levow
Docket No. DRB 02-322

Argued: November 21, 2002

Decided: April 15, 2003

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Peterson			X				
Maudsley							X
Boylan				X			
Brody			X				
Lolla				X			
O'Shaughnessy							X
Pashman				X			
Schwartz			X				
Wissinger			X				
Total:			4	3			2

Robyn M. Hill 4/29/03
Robyn M. Hill
Chief Counsel