

B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-019

IN THE MATTER OF :
 :
LOUIS L. PARADISO, :
 :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: April 17, 1997

Decided: June 30, 1997

James J. McDonald appeared on behalf of the District VC Ethics Committee.

Dennis Durkin 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 on a recommendation for discipline filed by the District VC Ethics Committee ("DEC"). A three-count complaint charged respondent with violations of RPC 1.3 (lack of diligence) (count one); RPC 1.4 (failure to communicate) (count two); and RPC 8.1(b) (failure to respond to a lawful demand

for information from a disciplinary authority)[cited in the complaint as R. 1:20-3(g)(3)].

Respondent was admitted to the New Jersey bar in 1987. He maintains a law office in Montclair, New Jersey. Respondent has no reported ethics history. However, he was the subject of diversion, pursuant to R. 1:20-3(I)(2)(B)(I). An agreement in lieu of discipline for minor misconduct [gross neglect, RPC 1.1(a) and lack of communication, RPC 1.4(a)] was entered on May 22, 1996. The underlying matter involved the dismissal of a complaint for lack of prosecution.

Because of a pending malpractice complaint against respondent filed by the grievant in this case, respondent's counsel argued to both the DEC and the Board that the ethics matter should either be dismissed without prejudice or stayed, pending the disposition of the civil matter. Both tribunals elected to proceed on the ethics charges.

The facts of this matter are as follows:

In August 1990, respondent was retained to represent Thurza Martin in connection with a personal injury matter. Martin had fallen on an escalator and broken her hip. Respondent filed a complaint in her behalf on June 10, 1991. After the fall, Martin's health deteriorated. She was required to move in with her

daughter, Vivian Lloyd, in 1991. Thereafter, she was admitted to the hospital for several months, where she remained until her death on April 2, 1993. Prior to her death, Martin had executed a power-of-attorney in favor of Lloyd, dated August 24, 1992.

On October 23, 1991, Martin appeared at a deposition. In respondent's view, Martin's testimony at that deposition had undermined the strength of her case. Respondent, therefore, urged Martin to accept a \$5,000 settlement offered by the defendants. Respondent claimed that Martin was not satisfied with the offer and refused to accept it.

Following Martin's death, respondent informed Lloyd that the case had only a "nuisance value." Lloyd initially misunderstood the meaning of the term, which she thought to be derogatory. Later, however, she learned its true meaning.

At the DEC hearing, Lloyd testified that, before Martin died, Martin had expressed concerns that respondent was not communicating with her about the case. Lloyd complained that, after her mother passed away, respondent also failed to communicate with her. For his part, respondent contended that he discussed the matter with Martin "every step of the way." He also claimed that he had performed a significant amount of work, including resolving a number of discovery problems in connection with Martin's case.

Respondent cited as examples problems in obtaining maintenance records from one of the defendants, the Schindler Elevator Corp., and in obtaining an expert witness because Martin was unable to pay the fee.

The matter progressed and Martin's case was listed for trial on April 12, 1993. Prior thereto, the court had entertained several motions, including the defendants' motion to dismiss the complaint, which motion was denied. On October 23, 1992, the court signed an order barring Martin's use of expert testimony at trial because of respondent's failure to give the defendants an expert's report.

Respondent was unable to attend the trial call on April 12, 1993 and attempted to adjourn the matter by contacting the assignment clerk. He was told that his appearance was mandatory. Initially, respondent could not recall the reason for his request for the adjournment. He was sure, however, that it must have been important. Respondent later recalled that the reason for not appearing was an illness in his wife's family.

After the adjournment request was denied, respondent went to the courthouse on April 12, 1993, albeit late, and missed the calendar call in the Martin matter. Respondent maintained that subsequently he encountered one of the defendants' attorneys, who

informed him that the case had been dismissed. Rather than request that the attorney return to the courtroom with him so he could explain to the judge why he had been detained, respondent allegedly went to the clerk's office to inquire about the status of the matter. He contended that he was informed that the case had not yet been dismissed. At the DEC hearing, respondent admitted that, since the judge was still calling cases, the clerk's office could not have known whether the case had been dismissed.

Relying on the information purportedly given by the clerk's office, respondent filed a motion to allow the admission of an expert's report. He was unaware at the time he filed the motion that his client had died. Respondent claimed that it was not until the return date of the motion that he learned that Martin's case had been dismissed earlier, without prejudice. By order dated April 30, 1993, the court denied respondent's motion for an order vacating the court's order (denying the expert witness) and dismissed the matter. The order also contained the following statement: "Furthermore, the Affidavit of Louis L. Paradiso, Esq. is not signed and appears to be a draft with handwritten corrections." Exhibit C-4. In a letter to respondent dated September 28, 1993, the court underscored the problems with respondent's representation in the Martin matter:

On September 10, 1993, there was oral argument on your motion to allow plaintiff to call a liability expert witness.

On October 23, 1992, I entered an Order compelling the production of all plaintiff's expert reports within thirty days. From that time until now there is a tortured history of this case as set forth in the opposition by both defendants. Needless to say, counsel for plaintiff in spite of his representations as to the practical difficulties he had was less than attentive to the file. However, while that should not work to the detriment of his client, I have no authority to grant the application if to do so will delay the trial date in this 1991 case. The application is therefore denied without prejudice and counsel are advised that they may seek relief from the assignment judge. (Emphasis supplied).

[Exhibit C-14]

According to respondent, he had made a motion to reinstate the complaint in due course, several weeks before the May 17, 1994 order dismissing the plaintiff's complaint with prejudice. A notation by the judge on the order of dismissal indicated that respondent's application to reinstate the case had not been made timely. Exhibit C-5. Respondent claimed that, after the case was dismissed, he was still attempting to negotiate a settlement and to convince Lloyd that a settlement was proper.

As noted above, while respondent contended on several occasions that he kept his clients - first Martin and then Lloyd,

as the administratrix of Martin's estate - informed "every step of the way," respondent was unable to point to any letters, memoranda or telephone bills substantiating this claim.

Lloyd testified that she called respondent a few months after her mother's death to determine the status of the matter; every time she called, a secretary informed her that respondent would return her telephone calls. According to Lloyd, the only time that she spoke to respondent directly was when respondent himself answered the telephone. Lloyd admitted, however, that she had had settlement discussions with respondent. For example, in May 1994, respondent informed her that there had been a \$5,000 settlement offer. While Lloyd at first accepted the offer, within a day of receiving a release from respondent she changed her mind. She wrote to respondent on May 18, 1994 informing him that she was willing "to go to court," if necessary. Exhibit C-8.

Lloyd claimed that as of August 1994 she was still unaware that her case had been dismissed. On August 29, 1994, respondent sent Lloyd a copy of a notice of appeal and documents filed in connection with the case. On August 1, 1994, respondent had filed a motion for leave to appeal out of time. By letter of August 5, 1994 from the Clerk of the Appellate Division, respondent was advised of deficiencies in his motion papers. Specifically, he had

failed to include a supporting brief as well as five copies of the order under appeal. Apparently, respondent had also submitted improper information on his notice of appeal and was instructed to file an amended notice of appeal with the complete case caption and to correct the date of the order from which he appealed. On September 4, 1994, the Appellate Division denied respondent's motion.

Lloyd only learned that her case had been dismissed after she contacted another attorney in early 1995. That attorney explained to her the meaning of the motion and that her case had been dismissed.

Respondent's justification for failing to timely file the motions and appeal was that he was trying to settle the matter and, at one point, believed that the matter had been settled. Respondent claimed that, based on his reliance that Lloyd would accept the settlement, he did not file a motion to vacate the dismissal or thereafter file an appeal within the required time.

* * *

The DEC determined that respondent had failed to properly communicate with Lloyd. The DEC concluded that Lloyd only learned

of a settlement offer in May 1994. Lloyd's testimony was corroborated by respondent's letter of May 17, 1994, enclosing a release for Lloyd's signature. Exhibit R-9. Lloyd rejected this settlement offer on May 18, 1994. Exhibit C-8.

The DEC found that respondent did not act in a timely fashion to vacate the dismissal of the complaint or to file an appeal from the order dismissing Martin's case with prejudice. The DEC further found that, unless and until a settlement was reached, it was respondent's obligation to ensure that nothing would prejudice his client's case; he was required to take all appropriate steps to preserve his client's rights. Thus, the DEC found by clear and convincing evidence that respondent did not act with reasonable diligence and promptness, in violation of RPC 1.3. The DEC did not believe respondent's testimony that he kept his client informed "every step of the way." The DEC found, in particular, that he did not disclose to Lloyd that the case had been dismissed until he gave her a copy of the motion for the leave to appeal to the Appellate Division, under cover letter dated August 29, 1994. In that letter, respondent did not explain to Lloyd the reason for the motion papers and did not apprise her of the dismissal of the complaint. In a similar vein, the DEC found that there was no evidence that respondent had informed Lloyd that the Appellate

Division had denied the motion for leave to appeal. The DEC, thus, found a failure to communicate with Lloyd, in violation of RPC 1.4.

The third count of the complaint charged respondent with failure to timely reply to the DEC's request for information about the grievance. The DEC found that respondent was confused about what was expected of him, because he had submitted required information during an earlier investigation in the matter. Respondent had also had several telephone conversations with the investigator and according to the DEC, may have believed that he had complied with the DEC's request for information. The DEC, therefore, dismissed the allegation of a violation of R. 1:20-3(g)(3) (third count).

In assessing the appropriate quantum of discipline, the DEC considered that respondent had had ethics problems before, citing respondent's earlier agreement in lieu of discipline for failure to keep a client reasonably informed. The DEC recommended the imposition of a reprimand.

* * *

Following a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty

of unethical conduct is supported by clear and convincing evidence.

Notwithstanding respondent's claim that he acted diligently in a case beset by problems, it cannot be denied that respondent's inaction caused the Martin case to be dismissed with prejudice. Respondent allowed more than one year to elapse before he filed a motion to vacate the order dismissing the complaint. Respondent cannot blame this delay on his belief that the matter would be settled. As he testified, he did not receive Lloyd's consent to settle the matter until May 1994. He should have preserved his client's rights by filing a motion to vacate the order immediately, all the while continuing with the settlement negotiations. Thereafter, respondent again failed to file an appeal within the prescribed time. Moreover, his motion for leave to appeal was incomplete. Respondent's conduct throughout this matter violated RPC 1.3. His failure to apprise Lloyd of the dismissals violated of RPC 1.4.

Generally, in cases involving only one instance of lack of diligence and failure to communicate, admonitions have been imposed. See In the Matter of Gerald A. Dienst, Docket No. DRB 95-489 (April 3, 1996). A five-member majority of the Board voted to impose an admonition. Three members voted to impose a reprimand.

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

Dated: 6/20/57



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Louis L. Paradiso
Docket No. 97-019**

Hearing Held: April 17, 1997

Decided: June 30, 1997

Disposition: Admonition

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali				x			
Cole			x				
Lolla				x			
Maudsley				x			
Peterson				x			
Schwartz				x			
Thompson			x				
Total:			3	5			

Robyn M. Hill 7/3/97
Robyn M. Hill
Chief Counsel