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SUPREME COURT OF NEW JERSEY

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January 26, 2012

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625

Re: In the Matter of Allan P. Dzwilewski

Docket No. DRB 11-341

District Docket No. XA-2010-030E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board shall deem warranted), filed by the District XA Ethics Committee (DEC), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board determined to grant the motion. The Board found that respondent violated RPC 1.2(a), RPC 1.4(b), and RPC 1.4(c), but dismissed the RPC 1.1(a) and RPC 1.3 violations. In the Board's view, a reprimand is the appropriate discipline for respondent's misconduct.

Specifically, in September 2003, respondent was retained by the grievant, Joseph Dubbiosi, to assist him in recovering the financial loss caused by his brother's theft of his identity. As part of this effort, respondent was to prepare a complaint, asserting claims against the financial institutions that the grievant's brother had deceived into extending him credit.

Although respondent and his associates worked on the grievant's matter until June 2008, no complaint was ever finalized or filed because respondent had concluded that the grievant could not recover any monies from his insolvent, incarcerated brother and that he did not have a case against the financial institutions. However, respondent never informed the grievant of his opinion. Moreover, he failed to return the telephone calls of the grievant and his wife and failed to provide them with updates on the status of the matter. This inaction on respondent's part constituted a violation of RPC 1.4(b).

Respondent also made no attempt to explain to the grievant that, although he had no recourse either against his brother or the financial institutions, he could attempt to sue the financial institutions based on a novel legal theory, which might or might not succeed. Respondent made no attempt to give the grievant the choice of deciding whether or not to proceed against the financial institutions, even if the risks outweighed the benefits. Thus, respondent violated RPC 1.4(c).

On the other hand, in the Board's view, respondent's conduct did not constitute gross neglect or lack of diligence. RPC 1.1(a) and RPC 1.3 pertain to an attorney's failure to take specific actions that should have been taken in the case, for example, when an attorney fails to file a complaint. That is not the case here. To be sure, although the grievant hired respondent to file a complaint, respondent determined that the cause of action had no merit. Thus, it cannot be said that, by failing to file a non-meritorious complaint, respondent exhibited either gross neglect or a lack of diligence. Rather, his fault lay in failing to communicate his opinion to the grievant and give him the option of directing respondent to move forward anyway or of seeking representation elsewhere.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 26, 2011.
2. Stipulation of discipline by consent, dated September 21, 2011.
3. Affidavit of consent, dated September 21, 2011.


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4. Ethics history, dated January 23, 2012.

Very truly yours,

  
Julianne K. DeCore  
Chief Counsel

JKD/paa

Enclosures

- c: Louis Pashman, Chair (w/o enclosures)  
Disciplinary Review Board  
Charles Centinaro, Director (w/o enclosures)  
Office of Attorney Ethics  
Caroline Record, Secretary (w/o enclosures)  
District XA Ethics Committee  
Allan P. Dzwilewski, Respondent (w/o enclosures)