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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 99-138

IN THE MATTER OF
RICHARD J. ZEITLER,
AN ATTORNEY AT LAW

Decision

Argued: July 8, 1999

Decided: February 22, 2000

Mitchell H. Portnoi appeared on behalf of the District VIII Ethics Committee.

Douglas Kleinfeld 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 an admonition filed by the District VIII Ethics Committee ("DEC"), which we determined to bring on for hearing before us. The complaint charged respondent with a violation of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) and (b) (failure to communicate) in the Henry matter and RPC 1.1(b), RPC 1.3 and RPC 1.4(b) in the Merced matter.

Respondent was admitted to the New Jersey bar in 1966. He maintains an office for the practice of law in Iselin, Middlesex County.

Respondent has an extensive disciplinary history. In 1976, he was suspended from the practice of law for one year for misconduct involving dishonesty, fraud, deceit or misrepresentation in two cases. In re Zeitler, 69 N.J. 61 (1976). In 1980, respondent was suspended for two years for his gross neglect of two client matters and his failure to tell his clients that their cases had been dismissed. In re Zeitler 85 N.J. 21 (1980). In 1995, respondent received an admonition for lack of diligence in one matter. In the Matter of Richard J. Zeitler, Docket No. DRB 95-323 (November 3, 1995). On April 29, 1999, respondent was reprimanded for the improper release of escrow funds. In re Zeitler, 158 N.J. 182 (1999). Finally, we recently determined to reprimand respondent for practicing law while on the ineligible list. In the Matter of Richard J. Zeitler, Docket No. 99-292 (1999). That matter is being submitted to the Supreme Court together with this case.

The facts in the matters before us are as follows:

The Henry Matter (District Docket No. VIII-97-063E)

In April 1994 Annie Henry retained respondent in connection with a personal injury action arising out of an accident on or about March 8, 1991. Henry had previously been represented by two other attorneys. On May 22, 1996, during the course of the trial in the

matter, the case settled for $60,000.[1] Henry understood that the $60,000 was to compensate her for her injury and did not include payment for her medical bills. During the court proceeding, respondent advised the judge, in Henry's presence, that he would pursue a PIP claim in her behalf in order to attempt to obtain payment for her outstanding medical bills. Respondent, however, failed to file the PIP claim and the statute of limitations expired. Furthermore, a judgment was entered against Henry by a medical provider and she was pursued by creditors in connection with additional bills stemming from her medical treatment.

Henry testified that she thought that respondent was pursuing a PIP claim in her behalf, although it is unclear at what point she thought the claim had been instituted. She testified that she had ongoing communications with respondent, to whom she brought her medical bills as they were received, believing that he "was taking care of [her] medical debts. . . ." In fact, the record contains several letters from respondent to Henry's medical providers, dated January 24, 1997, supplying them with a corrected policy number and

[1]According to paragraph eight of the formal ethics complaint, "Ms. Henry alleges that she was coerced into settling this case for the above indicated amount upon the representation of Respondent that the medical bills would be paid through a P.I.P action." Respondent denied having coerced Henry into accepting the settlement. The DEC determined that coercing a client into accepting a settlement did not fall under the Rules of Professional Conduct cited in the complaint.

asking that their bills be resubmitted to Henry's insurance carrier. Exhibits R-13 through R-15.[2]

Respondent offered the following explanation for his failure to pursue the PIP claim:

> Well, one of the reasons basically is I thought I was on the horns of a dilemma when I knew there was certain evidence out there that could hurt the PIP suit. That is why I was trying to negotiate. That is one of the reasons.
>
> The second thing is, I knew she was under continuing treatment, which was ordered by Dr. Countee. My recollection is she was under treatment until sometime in 1997. She says until sometime in 1996. I thought it was until 1997.
>
> But in any event, I knew that she still had treatment, which related back ordered by Dr. Countee, which related back to her surgery and which therefore would obviously keep the statute of limitations alive and well, which I considered it to be.
>
> And I probably acted - in hindsight, I probably acted maybe too cautiously worrying about, you know, possible problems like at the trial. But I never wanted to hurt this lady. I wanted to help her whichever way I could.
>
> [T7/29/99 59-60]

Later in the proceeding, respondent was asked if he had explained to Henry why the PIP claim had not been filed. Respondent replied as follows:

> I remember showing her some of these letters and telling her, hey, that I was trying to do it this way, negotiations. I believe I even told her that we didn't have a statute of limitations problem because of the fact that, in my opinion, she was still under therapy, and it was therapy ordered by Dr. Countee. And it would hold Countee in the case. If we held Countee in the case, we would hold the therapy in the case.
>
> [T7/29/99 70]

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[2]A fourth letter, exhibit R-16, which was sent to a medical provider that apparently was threatening to turn Henry's bill over for collection states ". . . we are in the process of doing a PIP Suit for this client as none of her medical bills have been paid." Clearly, the letter contains a misrepresentation because, in fact, the suit had not been filed. The hearing panel report makes no mention of this representation.

There was a great deal of discussion in the record about the statute of limitations issue. Respondent contended that it was his belief that, under a line of New Jersey cases, the statute of limitations was considered extended if the carrier initially assumed a payment obligation and the injury recurred. Thus, respondent claimed, he believed that the PIP action was viable.

Henry filed an ethics grievance against respondent in the summer of 1997. According to respondent, he believed that he was prohibited from taking action in her behalf from that point forward.

With regard to respondent's statement to the court that he would file the PIP claim — a possible misrepresentation to the tribunal — the DEC noted that respondent was not charged with misconduct in that regard and that, accordingly, the issue was not properly before it.

Respondent tried to make Henry whole by paying a number of her outstanding medical bills. The final payment was made in July 1998, between the two hearing dates in this matter. Exhibit R-18. Henry was represented by counsel in reaching that agreement with respondent.

* * *

The complaint charged respondent with a violation of RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4(a) and (b).

The DEC determined that respondent had violated RPC 1.3, noting that

> [i]n the Colloquy between Judge Hague, Mr. Zeitler and the grievant, it is clear that the client was led to believe that she had a viable PIP claim and that Mr. Zeitler would pursue same. He did not and grievant was therefore subjected to collections, judgements and pursuing her attorney for his negligence.

The DEC found no clear and convincing evidence of a violation of RPC 1.1(a) and RPC 1.4. As to the alleged violation of RPC 1.1(b), the DEC made no finding in this context because Henry was the first matter considered and, accordingly, not part of a pattern of neglect.

The Merced Matter (District Docket No. VIII-97- 094E)

Respondent represented Margarita Merced in connection with a personal injury claim arising from a slip-and-fall on October 10, 1994. On or about January 17, 1997 Merced accepted a settlement offer of $18,000. The funds were disbursed to her in February 1997. The thrust of the allegations against respondent is that Merced believed that she would receive a larger percentage of the settlement funds. Specifically, Merced claimed that she had been advised by respondent that she would collect approximately $12,000, after respondent's fee and the medical bills were paid. However, on February 28, 1997 Merced received a settlement check for $6,894.

According to respondent, he explained to Merced that she had a bill from her treating physician, Dr. Robert E. Grossman, of over $5,000, which had to be paid out of the

settlement proceeds.[3] Indeed, when Merced was asked if she thought that she would receive the full $11,894, she answered "[w]ell, that's what I understood, but when he explained to me he was supposed to pay for the doctors, the $5,000, then I accepted the $6,894 that he told me." Merced further understood that respondent would try to have Dr.Grossman's bill reduced by $1,200.

Confusing the matter are exhibits P-1 and P-2, settlement sheets from Merced's personal injury action. Exhibit P-1, which was not executed by Merced, does not reflect the medical bills' escrow and indicates that the balance due to her was $11,894. It is unclear when and from whom Merced received exhibit P-1. Exhibit P-2, dated February 28, 1997, which was executed by Merced, shows the escrow amount and a recovery to her of $6,894.

Respondent denied advising Merced that she would receive $10,000 to $12,000 from the $18,000 settlement. In respondent's answer, he conjectured that the preliminary unsigned settlement sheet omitted any reference to the doctor's bill, "presumably because of the inadvertence of the secretary or office clerk who typed up the sheet, or because it was felt the bill in question was covered by insurance."[4] In addition, respondent noted in his answer

[3]Respondent deducted $5,946 from the settlement as his fee. That sum is not in dispute. There are no allegations that respondent mishandled any of Merced's funds.

[4]Respondent's wife, Brenda Olson Zeitler, who works as his officer manager/paralegal, testified that she prepared exhibit P-1. She was unable to explain why Dr. Grossman's bill had been omitted from the settlement sheet. Ms. Zeitler further testified that it is respondent's practice not to give a copy of the settlement sheet to the client unless it is specifically requested. If this is true, respondent is violating R.1:21-7.

that, in December 1994, Dr. Grossman had filed a physician's lien. Exhibit R-2. Accordingly, respondent contended, at the time of the January 17, 1997 settlement Merced was aware of her debt to the doctor and knew or should have known that this debt would be paid out of the settlement proceeds.

With regard to the amount of the escrow, respondent testified that he retained $5,000 from the settlement proceeds, less than the amount of Dr. Grossman's bill, in hopes that he would be able to have the bill reduced. According to respondent, he believed that some of Merced's other medical bills had been paid by her insurance carrier. He explained that he "was holding an escrow basically for Rossman [sic] and possibly in case one of the other bills wasn't paid."

By letter dated March 17, 1997 Merced was advised by Dr. Grossman that he had agreed to reduce his bill to $3,800. Exhibit R-6. Merced testified that, when she went to respondent's office to pick up her check for the $1,200 difference between the withheld $5,000 and the doctor's final bill, respondent did not give her the funds and, in addition, "humiliated" her, a circumstance that sparked her filing of the ethics grievance against respondent.

Respondent, in turn, testified that at some point the doctor withdrew his consent to accept $3,800, apparently after Merced's son contacted him about reducing the bill further. Respondent forwarded the $5,000 to Dr. Grossman in April 1997. Exhibit R-9. Merced was aware that Dr. Grossman had withdrawn his offer and was insisting on $5,000. It is,

therefore, unclear why Merced continued to believe that she was to receive an additional $1,200. Respondent denied Merced's allegation that he had "humiliated" her.

In any event, Merced had other unpaid medical bills. Respondent failed to take care of paying those bills, as a result of which Merced was sued by one of her medical providers. Respondent noted in his answer that, to the best of his knowledge, the bills were not liens on the settlement proceeds and were sent by the providers to Merced's insurance carrier.

In April 1998, Merced and respondent reached an agreement whereby he would pay her $1,200, as well as her outstanding medical bills. She agreed not to institute "a legal malpractice or negligence action." Exhibit R-7. The record does not indicate if Merced was represented by counsel in the negotiation of this agreement. The suit instituted by the medical supplier has been dismissed.

* * *

The complaint charged respondent with a violation of RPC 1.1(b), RPC 1.3 and RPC 1.4(b).

The DEC concluded that respondent had violated RPC 1.1(b). The DEC remarked that

> [v]iewed in light of the prior count we have two clients who end up in suit with medical providers due to Mr. Zeitler's neglect. Both clients ended up in an adversarial position with their attorney and Mr. Zeitler had to enter into settlement agreements with his prior clients and pay their bills personally. It should be further noted that Mr. Zeitler did so rather reluctantly after the ethics grievances were brought.

The DEC did not find clear and convincing evidence of a violation of RPC 1.3 or RPC 1.4.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. We are, however, unable to agree with the specific findings of the DEC.

As to the Henry matter, respondent conceded that he had failed to file a PIP action. There was considerable debate, during the hearing and in the post-hearing briefs filed by both sides, on the issue of the statute of limitations on Henry's PIP claim. Regardless of the accuracy or reasonableness of respondent's belief that the statute of limitations had not run, it is undisputed that he did not file the claim in Henry's behalf at any time, subjecting her to a judgment against her and to pursuit by creditors and collection agencies. Notwithstanding how much time respondent thought he had to file the claim, his delay was inexcusable. If he had simply forgotten to file the claim, then his conduct would probably constitute simple neglect, which is not an ethics violation. The record shows, however, that respondent's failure to file was knowing. Under these circumstances, his conduct violated RPC 1.3.

In his brief, the presenter contended that, had Henry known the likelihood of success in a PIP claim, she would not have settled the case for $60,000. A review of the transcript

of the underlying court proceeding, however, reveals that the judge clearly stated that "[n]either he [respondent] nor I are agreeing – or guaranteeing rather that the PIP bills will be paid, but there's a separate PIP action." Exhibit P-6. Clearly, thus, Henry had been advised that there was no guarantee of success in the PIP suit, when she accepted the $60,000 settlement.

With regard to the allegation that respondent failed to communicate with Henry, he contended that he advised her that he was attempting to negotiate a resolution of her PIP benefits. Henry testified that she thought that respondent had filed a PIP claim in her behalf. Although there may not be clear and convincing evidence that respondent misrepresented the status of a PIP suit to Henry, it is unquestionable that she was unaware of what was being done in her behalf. Respondent should have made reasonable efforts to confirm and clarify his communications to Henry by, for example, following up in writing. His failure to take reasonable measures violated RPC 1.4(a) and (b).

In Merced, the DEC pointed out in its report that respondent failed to attend to the payment of the medical providers' bills, with the exception of Dr. Grossman's. However, there is no indication in the record that respondent had an obligation to pay those bills. There is no evidence that liens or "letters of protection" had been filed, obligating respondent to apply a part of the settlement proceeds toward those bills. Somewhat confusing was Merced's testimony that respondent told her that he would pay the doctors' bills from the settlement funds. Simple arithmetic would have made her aware that the $5,000 respondent

held for Dr. Grossman's bill would not be sufficient for the additional bills, particularly in light of her expectation that an additional $1,200 of those funds would be returned to her. Adding to the confusion, however, was the testimony of Theodore Orengo, a private investigator who works for respondent on a part-time basis. Orengo accompanied Merced to respondent's office when she signed the release in connection with her lawsuit. Orengo testified that, when respondent explained the distribution of the settlement proceeds to Merced, he mentioned Dr. Grossman's bill and the bill of at least one other doctor.

Merced indicated at the DEC hearing that she did not dispute respondent's handling of her settlement funds. From the record it can be inferred that the questions of the final sum she was to receive and which medical bill(s) respondent was going to pay from the proceeds may have been a misunderstanding. If that is the case, then it is not so evident that respondent was guilty of any misconduct in the Merced matter. Accordingly, we determined to dismiss the Merced matter, as well as the charge of a pattern of neglect [RPC 1.1(b)].

Unquestionably, respondent has an extensive ethics history, including an admonition, a recent reprimand, a possible future reprimand, a one-year suspension and a two-year suspension. Clearly, respondent's disciplinary record must be considered in assessing an adequate measure of discipline for his misconduct in this matter. In light of our determination that there is no clear and convincing evidence of unethical conduct in Merced, respondent's only ethics infractions are his lack of diligence and failure to communicate in Henry. If the within infractions stood alone, an admonition would have been appropriate.

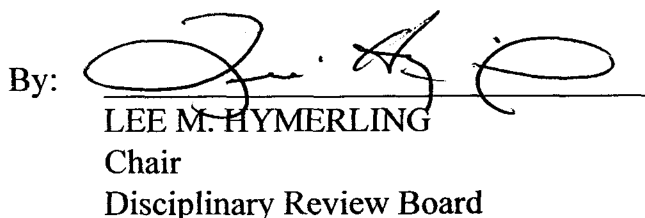
See, e.g, In the Matter of Jeffrey M. Cohen (Docket No. DRB 98-248) (admonition imposed where the attorney was guilty of gross neglect and lack of diligence in one matter; the attorney also failed to advise his clients that, because the defendants were judgment-proof, it was futile and wasteful to continue with the suit).

Clearly, respondent should have comported himself with the utmost prudence in this matter. Apparently, his prior run-ins with the disciplinary system have not sufficiently opened his eyes to his responsibilities to his clients. Accordingly, discipline stronger than an admonition is appropriate. Because, however, it does not appear that respondent acted out of venality or sloth, we unanimously determined that a reprimand is sufficient discipline for his ethics offenses.

In addition, respondent is to practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for two years. Furthermore, in light of respondent's repeated failure to comprehend his responsibilities to his clients he is to complete the skills and methods courses offered by the Institute for Continuing Legal Education. One member did not participate.

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

Dated: 2/22/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard J. Zeitler
Docket No. DRB 99-138

Argued: July 8, 1999

Decided: February 22, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Cole			x				
Boylan			x				
Brody			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz							x
Wissinger			x				
Total:			8				1

Robyn M. Hill 3/7/00
Robyn M. Hill
Chief Counsel