SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-154

IN THE MATTER OF

JAMES C. ZIMMERMANN

AN ATTORNEY AT LAW

Decision

Argued: September 11, 2003

Decided: October 22, 2003

Carole White-Connor appeared on behalf of the District X Ethics Committee.

Donald A. Caminiti 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 X Ethics Committee ("DEC"). The four-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.5(b) (failure to provide client with a written fee agreement), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). At the DEC hearing, the presenter made a motion to dismiss the charge of a violation of RPC 8.4(c) for lack of sufficient evidence to support

such a finding. The motion was subsequently renewed in writing, at the DEC's request. The DEC granted the motion.

Respondent was admitted to the New Jersey bar in 1991. He maintains a law office in Vernon, New Jersey. In 1998 he was admonished for a violation of RPC 1.3 for failing to properly research the applicable law in a matter, failing to take steps to file a complaint, and accepting a matter for which he had insufficient experience.

Although respondent's counsel stipulated at the DEC hearing that respondent's conduct violated RPC 1.1(a), RPC 1.3 and RPC 1.5(b), he suggested to the hearing panel that "perhaps" respondent had been so "overly cooperative in this investigation that there could exist in [the panel's] mind a serious question about whether the conduct exhibited by [respondent] rises to the level of gross negligence." In addition, he claimed that respondent returned a portion of his client's fee just to resolve the matter, hoping "that it would go away."

After the hearing, the panel chair conferred with the DEC vice-chair and the parties agreed that a written stipulation was required.

The following facts were gleaned from respondent's admissions, stipulation, and other documentary evidence.

In June 1999, Mary Ellen Barone retained respondent in connection with charges filed against her as a result of a June 8, 1999 motor vehicle accident. Barone also consulted with respondent about a possible personal injury action arising from the accident. While Barone was backing out of a driveway, her car was struck in the rear by a vehicle that crossed over a double yellow line. Both Barone and the driver of the other car were charged

with DWI and careless driving. Barone had previously been convicted of a DWI offense for a March 1998 incident. Respondent had represented her in that matter as well.

Respondent did not prepare a written retainer agreement for either the second DWI matter or the personal injury action. The evidence suggests that the $1,500 quoted by respondent for the DWI case was to be a retainer for services, not a flat fee. Barone paid respondent $900.

The charges against Barone were dismissed because her blood alcohol concentration was 0.87. She contended that, once the charges were dismissed, respondent agreed to reduce his fee to $900, a contention that respondent denied. A copy of a September 17, 1999 statement of services and of his March 21, 2001 letter to Barone confirmed his position.

Although respondent initially denied that he had agreed to pursue Barone's personal injury case, his counsel admitted that he did take some preliminary action in that matter. Barone was unable to obtain information about it from respondent. Barone was aware that the two-year statute of limitations was approaching. Therefore, in March 2001, she retained the firm of O'Donnell & Dumbroff to pursue the claim on her behalf. Dumbroff made arrangements to pick up Barone's file from respondent's office on or about March 14, 2001, but never followed through. By letter dated March 21, 2001, respondent told Dumbroff that he had expected Dumbroff to pick up the "enclosed material," which he was providing as a courtesy. The letter also stated that Barone still owed him a $560.50 legal fee in the "Vernon matter" (the DWI matter) and that, if the fee were paid, he would not assert a quantum meruit claim for fees in the personal injury case.

On that same date, respondent wrote to Barone about the $560.50 balance due, as per his September 17, 1999 statement, and informed her that he would not release records from that file without payment. Several paragraphs later, however, he stated that, as a courtesy to Dumbroff, he was sending him all of her medical records. O'Donnell & Dumbroff paid respondent $560.50.

Respondent also stated in his letter to Barone that he had completed his review of her personal injury claim and was not willing to prosecute it. The evidence shows that, between August 24, 1999 and March 21, 2001, respondent took no action in the matter.

Based on these facts, respondent admitted that he failed to communicate the basis or rate of his fee to Barone, in writing, in violation of RPC 1.5(b); that, between August 24, 1999 and March 21, 2001, he failed to act with reasonable diligence and promptness, in violation of RPC 1.3; and that he failed to undertake any substantive action in the matter, in violation of RPC 1.1(a).

Respondent denied that his conduct had violated RPC 8.4(c). As to this charge, the complaint alleged that respondent's demands for payment of a legal fee that he had agreed to compromise and his threat to assert a quantum meruit claim were groundless. In his motion to dismiss that charge, the presenter explained that it had been premised on a statement contained in respondent's reply to the grievance, which statement had later been clarified to the presenter's satisfaction. In addition, the presenter opined that the fee issue more properly belonged in the fee arbitration system.

The DEC found, and respondent admitted, violations of RPC 1.1(a), RPC 1.3 and RPC 1.5(b). The DEC concluded that respondent's conduct in first demanding payment of a

$560.50 balance and then acknowledging that he had agreed to reduce his fee was the product of a mistake and, hence, not a violation of RPC 8.4(c).

Although the DEC was concerned with respondent's inconsistent positions in denying that he had agreed to represent Barone in the personal injury matter and later threatening to assert a lien based on quantum meruit, it found that, because respondent took some action in that matter, his statement about the lien did not violate RPC 8.4(c):

> [T]hese were actions for which respondent would seek to be compensated, and thus, since the personal injury matter arose out of the DWI matter, and respondent claimed that he was entitled to a fee on that matter, his assertion of a lien, although tenuous, was not intentionally dishonest.

The DEC recommended the imposition of a reprimand and a proctorship for a one-year period.

Following a de novo review of the record, we are satisfied that the DEC's findings that respondent's conduct was unethical is supported by clear and convincing evidence.

For the reasons expressed by the DEC, we concur with its dismissal of the RPC 8.4(c) charge. Nothing shows that respondent's conduct with respect to the fee in the DWI matter was anything more than a mistake in reviewing the wrong file.

Based on respondent's admissions, we are, thus, left with violations of RPC 1.1(a), RPC 1.3 and RPC 1.5(b). Generally, the discipline in matters involving similar violations has been either an admonition or a reprimand. See In the Matter of Larry J. McClure, Docket No. DRB 98-430 (February 22, 1999) (admonition for gross neglect, lack of diligence, failure to communicate with client and failure to prepare a written fee agreement in one matter; in a second case, the attorney exhibited lack of diligence, failure to communicate with client and

failure to cooperate with disciplinary authorities); In the Matter of Peter F. Vogel, Docket No. DRB 98-190 (September 24, 1998) (admonition for gross neglect, lack of diligence, failure to communicate with client and failure to prepare a written fee agreement; in addition, the attorney did not submit a final accounting in a New York conservatorship action for more than three and one-half years); In the Matter of Diane K. Murray, Docket No. DRB 97-225 (October 6, 1997) (admonition for lack of diligence, failure to communicate with client and failure to provide written fee agreement); In re Diamond, 174 N.J. 346 (2002) (reprimand for gross neglect and failure to provide a written fee agreement); and In re Devlin, 144 N.J. 476 (1996) (reprimand for gross neglect, lack of diligence, failure to provide a written fee agreement and failure to expedite litigation; the attorney also failed to cooperate with disciplinary authorities and made misrepresentations).

Eight members determined that in light of respondent's prior admonition, a reprimand was the appropriate discipline for respondent's misconduct. One member did not participate.

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

Disciplinary Review Board

By: Julianne K. DeCore
Julianne K. DeCore
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James C. Zimmermann
Docket No. DRB 03-154

Argued: September 11, 2003

Decided: October 22, 2003

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley			X				
O'Shaughnessy			X				
Boylan							X
Holmes			X				
Lolla			X				
Pashman			X				
Schwartz			X				
Stanton			X				
Wissinger			X				
Total:			8				1

Julianne K. DeCore
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Acting Chief Counsel