SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 97-311

IN THE MATTER OF :
DAVID A. VALVANO, :
AN ATTORNEY AT LAW :

Decision

Argued: February 5, 1998

Decided: September 28, 1998

Leonard Rosenstein appeared on behalf of the District VB Ethics Committee.

Respondent did not appear for oral argument, despite proper notice of the hearing.[1]

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was originally reviewed by the Board at its October 16, 1997 meeting, following a recommendation for an admonition filed by the District VB Ethics Committee ("DEC"). The Board determined to bring the matter on for a hearing. The complaint charged respondent with a violation of *RPC* 1.4(a) (failure to communicate).

[1]The regular mail was not returned. Also, neither the green certified mail card nor the certified mail itself was returned to the Office of Board Counsel. In addition, three telephone messages were left at respondent's telephone number.

Respondent was admitted to the New Jersey bar in 1974. He is not currently engaged in the practice of law. During the time relevant to the within matter, respondent was employed as an associate with the law firm of Ronald Thompson in East Orange, Essex County. Respondent has no history of discipline.

On June 18, 1989 Camius Guillaume was injured by a falling ceiling. Approximately two weeks later, Guillaume retained the law firm of Ronald Thompson ("the firm") to pursue a personal injury claim in his behalf. According to Guillaume, he met with respondent and a paralegal during his first visit to the firm; respondent's name appeared on the retainer agreement, which is not a part of the record.[2]

Respondent, in turn, denied that he initially met with Guillaume. Respondent testified that, because Guillaume's native language is French, a French-speaking paralegal at the firm first saw Guillaume. According to respondent, he did not become involved in this matter until later, when he was instructed to file a complaint. Respondent explained in his answer that a settlement offer had been made, but that Guillaume was "difficult and obstinate." Therefore, respondent stated, Thompson told respondent to file a complaint in 1990 or 1991 "to protect the statute." Respondent denied, however, having any responsibility for handling the matter. He asserted that, after he filed the complaint, the file had been given to the

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[2]Guillaume's file was obtained from the firm after the DEC hearing and was reviewed by the presenter, respondent and the hearing panel. Because the DEC did not include the file in the record, its contents are unknown. Respondent was given the opportunity to testify further and/or supply a written submission after his review of the file. Respondent declined to testify, but furnished a letter dated June 24, 1997.

paralegal and that Thompson was responsible for ensuring service of the complaint. Respondent testified that he was not aware if the defendant had been served with the complaint and that, when he left the firm, in July 1994, he did not know if the case was still pending.[3]

According to the DEC report, "the case was dismissed, on the court's own motion, on October 18, 1991 for 'no activity within six months.' "

In denying initial responsibility for the file, respondent stated that he would not have discussed the case with Guillaume until 1994, "when the case was given to [him] to resolve." Respondent added that he "really never had charge of the file prior to that time." According to respondent, Thompson gave him an executed release, dated January 25, 1994, which had been signed by Guillaume (and witnessed by Thompson), in exchange for a $4,000 settlement. Respondent denied any involvement in the preparation and execution of the release.

For his part, Guillaume testified that respondent had given him the release to sign and had turned it over to Thompson to witness Guillaume's signature. Guillaume contended that the settlement amount was not on the release when he signed it. According to Guillaume, respondent had told him, however, that there had been an $8,000 settlement offer. Guillaume claimed that he never agreed to settle the matter for $4,000.

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[3] In a post-hearing letter to the DEC dated June 24, 1997, respondent stated that "attempts were made to serve the defendant, but to no avail."

Respondent, on the other hand, denied ever discussing a settlement amount with Guillaume. According to respondent, Thompson gave him the executed release and instructed him to seek a resolution to the case. Thereafter, by letter dated January 26, 1994 respondent forwarded to the adjuster the release and a stipulation of dismissal signed by respondent on January 25, 1994. (The letter apparently went out under Thompson's signature). By letter dated February 4, 1994 the adjuster told Thompson that the company no longer had a file on Guillaume's claim and requested that, if the matter had been settled, respondent forward the release to the insurance company. On March 15, 1994 respondent sent the release and stipulation of dismissal to John Caputo, an employee of the insurance company. Respondent advised Caputo that the matter had been settled for $4,000 and asked that the settlement be honored. By letter dated March 29, 1994 Caputo advised respondent that his records showed merely that a settlement offer of $2,500 had been rejected. Caputo further advised respondent that all settlement offers had been withdrawn.

On May 3, 1994 respondent discussed the case with Caputo. According to respondent, during that conversation Caputo denied that there had been a $4,000 offer made; Caputo told respondent, however, that he would reconsider his position. Respondent testified that he did not hear further from Caputo.

Respondent stated that, after he received the February 4, 1994 letter from the adjuster, he orally advised Guillaume of a problem with the settlement. Respondent could not recall if he had had any contact with Guillaume between May and July 1994, when respondent left

the Thompson firm; he was satisfied, however, that Guillaume had understood the status of his case.

Contrarily, Guillaume testified that, after he signed the release, no one at the firm contacted him. He remembered, however, meetings and conversations with the paralegal, respondent and Thompson. Guillaume also referred to letters from and conversations with respondent, in which respondent had proposed settlement amounts.[4]

Guillaume also testified that he received letters from Thompson and met with him on December 3, 1996, three months before the DEC hearing. According to Guillaume, during that conversation Thompson had blamed respondent for the problems with the case; Thompson had assured Guillaume that someone in the firm would be in touch with him. In January 1997, after no one had contacted him, Guillaume talked with a paralegal. The record does not reveal the contents of that conversation.

As of the DEC hearing Guillaume had not received a settlement. It appears, however, that the insurance company paid his medical bills.

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The DEC found respondent guilty of a violation of *RPC* 1.4(a), concluding that at some point respondent had assumed responsibility for Guillaume's case and, therefore, had a duty to keep him informed of the status of the matter. The DEC further concluded that

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[4]Although, as noted above, respondent denied that he had ever discussed settlement amounts with Guillaume, in his June 24, 1997 submission to the DEC, written after his receipt of the firm's file in this matter, respondent recalled certain settlement negotiations in 1991 and a letter to Guillaume in 1992 about a $4,000 settlement offer.

neither Guillaume nor the insurance carrier had agreed to settle the case for $4,000. In addition, the DEC determined that respondent did not disclose to Guillaume that his case had been dismissed. The DEC recommended that respondent receive an admonition.

* * *

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

Having accepted responsibility for some aspects of the case, respondent had a duty to keep abreast of its status and to keep his client apprised of any developments. Clearly, Guillaume, who believed that respondent was handling his case, should have been advised of the difficulties with the settlement, of which he was apparently unaware. Indeed, during the course of this matter, Guillaume was led to believe that his case had been settled. As of the date of the DEC hearing, he had received nothing. In addition, when Caputo advised respondent that there was never a $4,000 offer, that there was no settlement and that he would reconsider his position, respondent should have followed up on the matter. He failed to do so. Respondent's argument that he thought that Guillaume understood the situation through communication with Thompson and the paralegal and that they were following up on service of the complaint and settlement negotiations is without merit. Respondent's duty was to follow up on Guillaume's matter himself or to be certain that others were doing so.

Respondent contended that Guillaume's case was not entrusted to him until 1994, when Thompson gave him the release for $4,000 and instructed him to resolve the matter. Despite his denials of any involvement in the case prior to 1994, respondent was the attorney in the firm who filed the complaint in 1990 or 1991 and thereafter had settlement discussions with Guillaume, as respondent admitted in his June 24, 1997 letter to the DEC. When an attorney has any involvement in a matter, he or she has an obligation either to continue to handle the matter or, at a minimum, to ensure that another attorney is overseeing its progress. What the attorney cannot do is shrug off responsibility for the matter merely because another attorney also became involved in handling some aspects of the case.

There is no question but that this case was mishandled. No one took full responsibility for the matter, preferring to assume that someone else in the office was monitoring its progress. Because of respondent's disregard for the file, Guillaume's claim was still unresolved as of the date of the DEC hearing. Undeniably, respondent's conduct violated *RPC* 1.4(a).

Ordinarily, conduct of this sort results in an admonition. *See In the Matter of Pamela A. Baken*, Docket No. DRB 98-151 (July 28, 1998). However, the Board was also troubled by respondent's non-appearance at the Board hearing. Although a respondent is not compelled to appear before the Board, he or she must waive oral argument or be present at the hearing. Here, respondent did neither, despite proper service of the hearing notice. For respondent's ethics infractions and indifference toward the disciplinary system, the Board

unanimously determined to impose a reprimand. *See In re Albert* 120 *N.J.* 698 (1990). One member did not participate.

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

Dated: 9/28/98

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David A. Valvano
Docket No. DRB 97-311

Argued: February 5, 1998

Decided: September 28, 1998

Disposition: Reprimand

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

Robyn M. Hill 10/7/98
Robyn M. Hill
Chief Counsel