

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-190

IN THE MATTER OF
IRWIN R. REIN
AN ATTORNEY AT LAW

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Decision

Argued: November 18, 1999

Decided: February 22, 2000

Eric S. Pennington appeared on behalf of the District VB Ethics Committee.

Melvyn H. Bergstein 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 by the District VB Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit client to make an informed decision) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1962. He maintains a law office in West Orange, New Jersey. Respondent has no history of discipline.

The facts in this matter were not in dispute. Respondent signed a stipulation admitting the allegations of the complaint. The only issue left, thus, is the quantum of discipline.

The facts are as follows:

Respondent's practice consisted primarily of workers' compensation and personal injury cases. He represented many minority clients because of his familiarity with foreign languages. Respondent had represented Lisete Lopes and her husband prior to the matter giving rise to this ethics complaint. In July 1994, Lisete Lopes was treated in the emergency room of Union Hospital for a possible chemical reaction to the use of hair dye manufactured by the Clairol company.

At the ethics hearing,¹ respondent asserted that Lopes experienced problems after dying her hair. As a result, she went to the hospital for treatment and thereafter to a doctor for some medication. Respondent remarked that Lopes had been using the hair dye for more than twenty years, approximately every six or seven weeks. Respondent believed that she might have developed an allergy to the product. According to respondent, he told Lopes that he would not take her case, that it would be too costly to obtain an expert to testify in her behalf and that her trial expenses would likely exceed her recovery. Respondent stated that Lopes wanted to recover her expenses only. Respondent opined that there might have been

¹ No oath was administered to respondent at the DEC hearing.

contributory negligence in her use of the product. Therefore, respondent stated, he agreed to handle the matter in a "personal way" as a favor to Lopes, but did not consider it to be "a real case."

On November 22, 1995, respondent wrote to Clairol advising it that he was representing Lopes in connection with her claim for damages. On February 1, 1996, Clairol's attorney, the grievant in this case, replied that Clairol was prepared to settle the matter for \$328.80. After respondent consulted with Lopes, he informed the grievant that his client had rejected the offer and was demanding a settlement of \$5,000.

On April 1, 1996, the grievant rejected the \$5,000 settlement demand and conveyed a counteroffer of \$550, which respondent did not accept. Respondent heard nothing further from Clairol and wrote to the grievant on September 27, 1996 making a new demand in the amount of \$1,500.

From September 27, 1996 until October 17, 1997 respondent took no further action in the matter. On October 17, 1997, the statute of limitations expired. About the same time respondent advised Lopes that he was unable to obtain any more than the \$550 earlier offered by Clairol. Respondent did not inform his client that the statute of limitations had run or that he planned to pay her the settlement amount from his own pocket. Lopes agreed to accept the settlement. Shortly thereafter, respondent gave Lopes a check in the amount of \$366.67, drawn on his attorney business account. He also gave her a statement reflecting the \$550

settlement and an offset for his one-third counsel fee. Clairol did not make any payment to either respondent or Lopes.

Respondent admitted that he did not handle the matter properly, had never done anything like this before and would never do it again. He also expressed contrition for his conduct. Respondent submitted in evidence several letters attesting to his good character.

Relying on In re Riva, 157 N.J. 34 (1999) (reprimand for neglect, lack of diligence and misrepresentation in one matter), respondent's counsel argued that a reprimand was the appropriate discipline for respondent's ethics infractions. The presenter, however, claimed that this matter was "strikingly similar" to In re Knight, 134 N.J. 121 (1993), where the attorney was suspended for six months for gross neglect, conduct involving dishonesty, fraud, deceit or misrepresentation, failure to cooperate with the ethics authorities and failure to comply with recordkeeping requirements. The presenter acknowledged that this matter differed somewhat from Knight because Knight had failed to cooperate with the ethics committee. Here, the presenter acknowledged that respondent had fully cooperated with the investigation, remarking that it had saved all involved "an immense amount of time and difficulty in prosecuting the case." The presenter also cited In re Doyle, 146 N.J. 629 (1996) (six-month suspension for conflict of interest). Relying on these two cases, the presenter argued that a one-month suspension was appropriate discipline.

The DEC found that from the outset respondent had been totally cooperative with the DEC investigation. The DEC considered that respondent had stipulated to the factual

allegations in the complaint and his violations of the following Rules of Professional Conduct: RPC 1.1(a) and RPC 1.3 for failing to diligently pursue settlement negotiations or filing a complaint before the statute of limitations expired; RPC 1.4 presumably (b) (failure to explain the matter to the extent reasonably necessary to permit client to make an informed decision) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for failing to disclose to his client that the statute of limitations had expired and that he was personally paying the "purported" settlement of her claim.

The DEC noted that, while initially respondent stated in the stipulation that a hearing was required to determine whether discipline was necessary at all, respondent agreed, at the DEC hearing, that some form of discipline was required.

The DEC was impressed with respondent's unblemished professional record of thirty-seven years and with his full cooperation with the DEC investigation. Relying on In re Riva, the DEC determined that a reprimand was adequate discipline for respondent's ethics transgressions.

* * *

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

Respondent's failure to file a complaint violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence). He also violated RPC 1.4(b) and RPC 8.4(c). Indeed, it is clear from the stipulation that respondent did not inform Lopes that the statute of limitations had expired, when he told her that Clairol would only pay her a settlement of \$550. This clearly was a violation of RPC 1.4(b) because Lopes was precluded from making an informed decision about how to proceed with her case. Respondent's conduct in this context also constituted a misrepresentation by silence. Crispen v. Volkswagonwerk, 96 N.J. 336, 347 (1984). Moreover, respondent's claim that Clairol had agreed to pay Lopes only \$550 was also a misrepresentation. In reality, he had had no further contact with Clairol's attorney between writing to him in September 1996 and relaying the offer to Lopes in October 1997.

Because of Lopes' failure to participate in the DEC investigation, it is not known if she experienced any financial loss due to respondent's conduct. According to respondent's and his attorney's statements, which were not made by way of sworn testimony, the consequences to Lopes were minor. Apparently, she experienced some damage to her hair, which eventually grew back. On this record, it cannot be found that Lopes was financially harmed by respondent's actions or inaction.

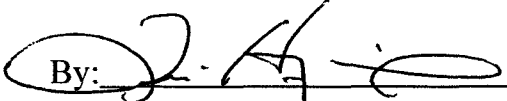
Based on respondent's admissions, we find that his conduct violated RPC 1.1(a), RPC 1.3, RPC 1.4(b) and RPC 8.4(c). The DEC correctly relied on In re Riva, 157 N.J. 34 (1999) in assessing the proper measure of discipline, although Riva's conduct was admittedly more serious than respondent's. There the attorney failed to file a timely answer to a complaint against his

clients – resulting in the entry of a substantial default judgment (\$1,700,000) against them – and failed to act with necessary diligence to vacate the default. Also the attorney failed to communicate with the clients in a timely manner and misrepresented the status of the matter. Although the Court noted the attorney’s misrepresentations to his clients, it found violations of RPC 1.1(a) and RPC 1.3 only. The Court found that the attorney’s conduct was an aberrational neglect of his professional responsibilities, rather than conduct based on dishonesty, deceit or contempt for the law. Although the Court considered that a default judgment of \$1,700,000 was entered ("perhaps against the wrong parties") in a case that settled for \$11,500, it, nevertheless, imposed only a reprimand. See also In re Hoffman, 154 N.J. 259 (1998) (reprimand for lack of diligence, failure to communicate with client, misrepresenting status of case to client and failure to cooperate with disciplinary authorities) and In re Fox, 152 N.J. 467 (1998) (reprimand for gross neglect, failure to communicate with client and misrepresenting status of case).

As the DEC correctly found, the circumstances of this matter were much less egregious than those in the Riva matter. They were, nonetheless, serious, particularly because of the misrepresentation to the client. We, therefore, unanimously determine to impose a reprimand. One member did not participate.

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

Dated: 2/22/2000

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

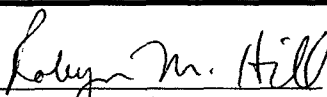
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Disposition: Reprimand

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

 3/7/00
Robyn M. Hill
Chief Counsel