SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-402

IN THE MATTER OF

MICHAEL A. AMANTIA

AN ATTORNEY AT LAW

Decision

Argued: December 17, 1998

Decided: April 5, 1999

Michelle Siekerka appeared on behalf of the District VII Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District VII Ethics Committee ("DEC"). At all relevant times respondent maintained a law office in Trenton, Mercer County. Respondent was admitted to the New Jersey bar in 1988 and has no prior ethics history.

The two-count complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client) in a real estate matter and in a probate matter.

I. The Lopez Matter

The complaint alleged that respondent failed to meet numerous discovery deadlines, failed to assert a breach of contract claim and failed to communicate with his client in a real estate matter.

In March 1995 Joseph C. Lopez, the grievant in this matter, retained respondent to represent him in a lawsuit involving a rental property that he owned in Trenton. As early as 1978 Lopez promised Elizabeth Sincak, his tenant and the defendant in the case, that he would sell the Trenton property to her if she paid for Lopez' mortgage loan. Nine years later, in 1987, Lopez executed and gave to Sincak a simple one-sentence, handwritten "contract," stating that the property had been sold to her. Despite that document, Lopez later transferred title to the property to his daughter, Jackie Gonzalez, the plaintiffs in the action.[1] The suit sought to evict Sincak for failure to pay the mortgage on a timely basis. Sincak then filed a

[1]Lopez testified that he never intended to sell the property to Sincak. He claimed that he executed the document hastily during a meeting with Sincak at the rental property in 1987. Because Lopez lived in Wisconsin, he was afraid that, if he lost Sincak as a tenant, he would not be able to re-rent the property. Therefore, he executed the document as an inducement for Sincak to stay, never intending to honor it.

recent order". In it, respondent advised Lopez that answers to interrogatories were long overdue and, therefore, had to be sent immediately. According to respondent, Lopez did not react to his letter. Respondent, therefore, prepared proposed answers and forwarded them to Lopez by facsimile. Lopez responded by making revisions. Apparently, the answers were then forwarded to Trenchard. Although the record is not entirely clear, it appears that, on November 13, 1995, Trenchard filed a motion for more responsive answers to interrogatories.[2] The motion, which was returnable on December 1, 1995, sought to suppress Lopez' third-party answer. According to one of Trenchard's certifications in the lawsuit, new answers to interrogatories were "faxed" to her the day before the return date of the motion; she then withdrew her motion. Because, however, Trenchard found the answers to be "incomplete and unresponsive" — in particular, Lopez' income tax returns from 1978 through 1995 were missing — on February 28, 1996 she filed another motion, returnable on March 15, 1996, again seeking to suppress Lopez' answer.

On February 14, 1996, respondent wrote to Lopez to inform him of Trenchard's problems with the answers and to request that he contact respondent to discuss the situation. That letter read as follows:

> I know that you have objected to providing the tax returns; however, I would rather seeing (sic) you provide this information then (sic) face the possibility of the court's being annoyed and you ending up on the wrong end of the litigation.

---

[2]It appears that Trenchard's office initially denied receiving these materials, thus prompting the motion. There is no suggestion that respondent, however, did not send them to Trenchard.

On March 15, 1996, respondent again wrote to Lopez to advise him that the court had extended until March 29, 1996, the time within which to provide more responsive answers to interrogatories. Respondent's letter simply stated that "the time to withhold the tax returns (if you have them) is no longer here." He enclosed a copy of Trenchard's letter warning him that she would move to strike Lopez' answer if she did not receive the tax returns and more responsive answers. On March 21, 1996, respondent sent a handwritten note to Lopez, stating that "the additional information that everyone wants are the tax returns that you don't want to release." On April 1, 1996, Lopez wrote to respondent, stating that "I feel that submitting Tax Returns to be scrutinized by the opposing attorney would not be in my best interest, also I feel that this exercise would not be relevant to this case."

On May 5, 1996, respondent wrote to Lopez to advise him that his answer had been stricken for failure to provide discovery, particularly the income tax returns. In that letter, respondent set forth a process to reinstate the case, noting that action had to be taken within ninety days.[3] He advised Lopez to make available whatever tax records he might have in his possession and to furnish Trenchard with an authorization to obtain other records directly from the IRS. He also advised Lopez that, if he did not act promptly, Trenchard would obtain a default judgment against him. Lopez then forwarded to respondent some, but not all, of the requested tax returns.

[3] Presumably, respondent was advising Lopez of his right to make a motion to vacate the dismissal, pursuant to R. 4:23-5.

On June 27, 1996, Lopez "faxed" to respondent a copy of a letter from the mortgagee of the property, First Union Bank, warning that, because Lopez' mortgage payments (customarily paid by Sincak) had repeatedly been late, any future late payments would be returned. On the face of the letter Lopez wrote, "Mike, this is really screwing up my credit rating" and "[a]lso, I am in possession of 2 [of Sincak's] money orders, please advise." Lopez also forwarded to respondent a copy of a letter from his daughter's attorney, Barry Fulmer. That letter alluded to a trial date of June 3, 1996 and stated that Fulmer had heard nothing from respondent regarding their mutual interests in having the breach of contract issue litigated. The letter added that respondent's cooperation was critical to Gonzalez'claim.

Apparently, Lopez did not yield to respondent's advice about the need for the tax returns in order to file a motion to vacate the order striking the answer. Trenchard then moved for the entry of a default judgment. Respondent filed an objection to the motion, claiming that Lopez had complied with the court's discovery rulings and noting that income tax records for the years 1993 through 1995 had been produced. Contemporaneously to this submission, respondent filed a motion to reinstate Lopez' answer and to vacate the default, again claiming that Lopez had complied with the court's prior discovery orders. It appears that the court found that Lopez still had not provided all of the tax returns requested, because the court entered an order giving Lopez until September 27, 1996 to comply with the its prior orders. On September 14, 1996, respondent sent Lopez a letter indicating that the

court had heard Trenchard's motion to enter a default judgment, but had withheld ruling on it, provided that Lopez' more responsive answers to interrogatories were supplied by September 27, 1996. Respondent also indicated that he would draft proposed answers and "fax" them to Lopez for his comments.

On September 17, 1996, Lopez sent respondent a facsimile complaining of the latest developments in the case and expressing the opinion that he was about to lose the case. He accused respondent of a lack of interest in the preparation of the case. He also stated that a motion for breach of contract should be made in the "foreclosure litigation," a litigation that is only briefly mentioned in the record.

Respondent then prepared more responsive answers to the interrogatories and forwarded them to Lopez. Lopez promptly reviewed them, made changes and returned them to respondent on the same day, along with a signed authorization allowing the IRS to release his tax returns to Trenchard.

On September 27, 1996, respondent hand-delivered the following materials to Trenchard: answers to interrogatories; copies of IRS tax returns for 1993, 1994 and 1995; a copy of a letter to the court with objections to Trenchard's proposed order; and the authorization to the IRS.

Thereafter, Trenchard filed yet another motion, claiming that Lopez' answers were still unresponsive. Respondent filed an opposition dated November 22, 1996, stating that, on September 27, 1996, he had forwarded to Trenchard revised answers to interrogatories,

copies of the available tax returns and an authorization for the release of IRS records for the other years sought. Respondent added that "of late" Trenchard had requested Lopez's deposition. Respondent reiterated his position that he had made a good faith effort to meet all of the court's discovery requirements.

On December 2, 1996, respondent called Lopez to discuss Trenchard's outstanding deposition request, scheduled for December 4, 1996, pursuant to a trial notice, dated October 1, 1996, that also set a trial date for December 17, 1996. On this issue, respondent claimed that he had mailed the trial notice to Lopez much earlier than their December telephone conversation, but to an old address. Lopez denied receiving any such notice, professing no knowledge that his deposition had been scheduled for December 4, 1996. Lopez produced a December 2, 1996 facsimile to respondent stating that he could not travel from Wisconsin to a "hearing" (referring to his own deposition) scheduled for December 4, 1996 because of the extremely short notice afforded by respondent's December 2, 1996 telephone call. Respondent could not corroborate his testimony that he had sent the notice to Lopez before their telephone conversation. Ultimately, on December 23, 1996, the court struck Lopez' answer with prejudice and awarded legal fees to Sincak.

Lopez also testified that, throughout the case, he did not receive general information from respondent in a timely fashion. Lopez denied receiving much of respondent's correspondence dated earlier than September 1996, although it is clear from the record that Lopez replied to respondent's communications dated before September 1996. In fact, Lopez

communicated with respondent by letter and facsimile in a fashion that indicates an overall awareness of events in the case. In this regard, Lopez testified that he obtained much of the information from his daughter, the plaintiff in the case. He also testified that, had he known that the tax information was critical to the case, he would have submitted it much earlier.

Finally, Lopez testified that he thought that the most important aspect of the case dealt with Sincak's failure to make timely payments on the mortgage and that, even if there was a contract to sell the property to Sincak — the existence of which he denied — Sincak had breached it, thereby causing a foreclosure of the mortgage loan. Lopez pointed to several instances in his letters to respondent that supported his position. In addition, copies of correspondence from Fulmer, Gonzalez' attorney, also indicate that the breach of contract issue was considered critical to the case.

For his part, respondent testified that, while his representation was not perfect, the problems in the case were a direct result of Lopez' failure to cooperate with him in the production of documents. In denying any wrongdoing, respondent complained of the seemingly endless barrage of discovery motions from his adversary and the failure to reach a determination on the merits of the case because of his client's behavior.

With regard to the charge of failure to communicate, respondent pointed out that he had numerous contacts with Lopez over the course of the representation, as documented in the record. Respondent also argued that, contrary to Lopez' contention, there was ample evidence in the record that the two had been communicating long before September 1996.

Respondent also questioned Lopez' credibility, alleging that the purpose of the "contract" was to deceive Sincak into believing that he had sold the property to her with no intention of doing so.

Finally, with regard to the issue of the breach-of-contract claim that Lopez wanted litigated, respondent argued that he did not want to raise that claim until such time as Lopez had complied with the court's discovery demands. According to respondent , he believed at the time that Lopez was in a very weak position to make such a claim.

II The Zarodnansky Williams Matter

In early 1993, Agnes Witkun contacted respondent on behalf of her ailing brother, Joseph Zarodnansky, to prepare his will. At the time, Joseph was in a nursing home. At respondent's first meeting with Joseph, Agnes was present. Two other siblings, Paul Zarodnansky and Pauline Williams, beneficiaries under the will, filed grievances against respondent, alleging that he had mishandled the administration of the estate. Specifically, the complaint alleged that respondent failed to "move the handling of the estate along," failed to provide the beneficiaries with an accounting of the estate and failed to communicate with them in a manner necessary for them to make informed decisions regarding the representation.

Respondent testified at the DEC hearing that, because his initial meeting with Joseph had not been private, he needed to be assured that what Joseph had told him in the presence

of Agnes was in fact Joseph's true testamentary intent. Accordingly, respondent testified, he returned to the nursing home without Agnes. After respondent assured himself of Joseph's intent, he drafted a will reflecting Joseph's wishes.

The will was witnessed and signed on March 9, 1994. It called for two parcels of real estate to be left to Joseph's foster children, John and Linda Frampton. The rest of the estate was left in equal shares to three of Joseph's siblings: Agnes, Paul and Pauline. Agnes was chosen to serve as executrix of the estate.

Shortly thereafter, on April 19, 1994, Joseph died. On May 2, 1994, the will was admitted to probate and Agnes was appointed as executrix of the estate.

At some unknown point between Joseph's death and August 1994, Agnes retained respondent to probate the will. On August 24, 1994, almost four months after the will was probated, respondent mailed a copy to Paul and Pauline. Respondent advised them that he had been retained by Agnes, as executrix of the estate, and invited them to contact him if they had any questions.

At some undisclosed date thereafter, respondent became aware that Agnes had received $100,000 from Joseph, an apparent deathbed gift. Respondent testified that Agnes' refusal to declare the gift and to include it in the estate tax return impaired his ability to file the return and to give the other heirs an accounting of the disposition of the estate assets.

It appears from the record that respondent's next step was to send a belated retainer agreement to Agnes on November 4, 1994. Respondent's cover letter included the following instruction:

> Kindly contact me in order to schedule a meeting to discuss the next steps needed to be taken with regard to the estate. For example, at this meeting, it would be important for you to bring a copy of all the deeds to the property so that I can begin to prepare the Inheritance Tax Return for these properties. In addition, you should also bring a complete and full listing of all bank accounts and money investments in which Joseph held at the time of his death. This is also required for the preparation of the Inheritance Tax Return.

The letter did not notify Agnes that the New Jersey inheritance tax was due on December 19, 1994. Respondent failed to file the return.

On January 11, 1995, almost one month after the tax returns had to be filed, respondent wrote to Paul and Pauline to update them with respect to the estate. Respondent's letter stated that he had taken steps to collect the necessary information to file the inheritance tax return. It also stated that action had been taken to list and sell a third property located in Trenton. The letter noted that it was prudent to pay the tax "at the last possible moment." Respondent did not inform them that, at the time, the inheritance taxes were already overdue and that the estate was subject to the imposition of penalties for late payment.

On that same date, respondent also wrote to Agnes and stated that "on November 4, 1994, this office sent you an original and copy of a retainer agreement. Since that time we have not heard from you with regard to this matter." Respondent did not notify Agnes that

the estate tax was overdue. Instead, he advised her that the inheritance tax return needed to be completed very shortly.

On May 8, 1995, respondent sent Agnes a letter asking her to contact him " so that we can set up an appointment to begin finalizing documentation for the inheritance tax return." By that time the return was six months overdue. The letter did not inform Agnes of this fact.

Respondent next wrote to Paul and Pauline on January 31, 1996. He reassured them that he was "attempting to marshall the assets and prepare the Inheritance Tax Return." At this juncture, the inheritance tax return was thirteen months past due.

In December 1996, one of the foster children, through his attorney, Charles Casale, prepared a deed to transfer title to one of the properties for Agnes' signature. Respondent wrote to Casale on December 13, 1996 to advise him that title to the property could not be transferred because the inheritance tax return had not yet been filed. Respondent stated that his office was diligently working to complete the estate. At this point, the inheritance tax return was overdue by more than two years.

On January 31, 1997, respondent again wrote to Paul and Pauline, in effect stating that no progress had been made during the previous year and suggesting that Agnes' lack of attention to the matter, due to her husband's recent death, had caused undue delay. He asked them to continue to be patient until Agnes had time to collect herself.

Between mid-March 1997 and May 1997, respondent wrote a series of letters. In a letter to Casale, respondent stated that, although the deed was ready for Agnes' signature, he was having difficulty communicating with her. On April 29, 1997, respondent wrote to Agnes. He stated that he had been trying to reach her for over three and one-half months and that she had not responded to his attempts. He urged her to be fair to the heirs, who had been very patient. Finally, on May 8, 1997, respondent sent signed deeds to Joseph's foster children.

On August 19, 1997, respondent met with and later wrote to Agnes to convince her to release $17,524 from the estate bank account so that he could file the inheritance tax return on August 27, 1997. According to respondent, Agnes refused to do so because he had included information in the return about the "gift." It was then, respondent recalled, that he realized that he could not effectively represent Agnes or the estate.

Finally, on October 6, 1997, respondent wrote letters to Agnes, Paul and Pauline to notify them that he was terminating his representation.

Pauline testified at the DEC hearing that she happened upon respondent sometime after Joseph's death and inquired about the status of the case. She recalled that, although respondent had promised her a response within a few weeks, she had never received an answer to her inquiry. She further remembered calling respondent's office and, on two other occasions, leaving messages on his answering machine about the case. According to Pauline,

respondent never called her back. Shortly thereafter, she claimed, she learned that some of the beneficiaries (the foster children) had already received property under the will.

With respect to documentation from respondent, Pauline acknowledged receipt of respondent's September 24, 1994 and January 13, 1995 letters. She denied receiving any other documents from him over the course of the case.

Finally, Pauline testified at length that her relationship with Agnes became strained when Pauline asked her who the attorney handling the estate was. At the time, according to Pauline, she did not know the contents of the will. She recalled Agnes' anger and warning to stay away from her lawyer because it was none of her business. From then on Pauline took an interest in the will. She testified that, once she saw the will, she realized that it did not comport with Joseph's wishes, as he had related them to her. However, Pauline was not questioned at the DEC hearing about Joseph's intent.

Paul also testified at the DEC hearing. Like his sister Pauline, he recalled having left telephone messages at respondent's office, which were never returned. Paul claimed that, early in the case he had requested a copy of the will from respondent and that it had taken respondent six months to comply with his request.

Of primary concern to Paul was his belief that the will drafted by respondent three weeks before Joseph's death did not contain Joseph's true testamentary intent. Paul testified that Joseph had called him just prior to the new will was drafted:

> [H]e had called me and he says I'm dying, he said I would like to talk to you, and this is his exact words, I would like to talk to

> you....Anyway, when I came in, I'm sorry I didn't have a recorder with me, but I started to write down everything that he was telling me for the simple reason because I thought perhaps he has called me in for me to be the executor of his will, I was putting down everything that he was saying, I wrote down and I have it in the other room.[4]

Paul also testified that he had requested an accounting of the estate from respondent almost from the outset because he did not trust his sister Agnes with his brother's financial affairs.

For his own part, respondent testified that Joseph's estate was not complex. He denied any wrongdoing, claiming that it was Agnes who had caused the delays in the case. Likewise, respondent denied that he failed to communicate with Paul and Pauline. Respondent claimed that he had sent several notices to them and believed that they had been received. In fact, the record shows that respondent sent four letters to Paul and Pauline between August 1994 and January 1997. Respondent denied failing to return their telephone calls, noting that both grievants had admitted to talking to him on the telephone during the representation.

Respondent also denied any failure to diligently represent the estate, blaming Agnes for the delay in the administration of the estate. Respondent asserted that he had made repeated appeals to Agnes to disclose the deathbed gift for tax purposes. He portrayed her as a disagreeable client who forbade him from speaking to the other heirs concerning the

---

[4] The DEC determined that the notes were not germane to the issues before it. They were not introduced into evidence.

estate and actions taken by her and myself." Indeed, according to respondent, it was Agnes' ultimate failure to heed his advice on the tax issue that forced him to withdraw from the case.

In his answer to the ethics complaint and again in his testimony before the DEC, respondent outlined work that he had completed for the estate, including ordering title searches and real estate appraisals on the three properties and investigating the viability of claims against individuals to whom Joseph had loaned money.

Finally, respondent blamed Paul and Pauline for any delays in the case that could not be laid at Agnes' feet, contending that their demeanor flustered Agnes and caused her to further waste time, to the detriment of the estate.

* * *

In Lopez, the DEC found that respondent violated RPC 1.3 and RPC 1.4 by dealing with his adversary's discovery requests on a "last minute" basis, ignoring Lopez' and Fulmer's requests to take action on the breach-of-contract issue and allowing the case to "drift" out of control, resulting in its dismissal with prejudice.

In Zarodnansky, the DEC found that respondent violated RPC 1.3 by failing to settle the estate in a timely manner. The DEC also found a violation of RPC 1.4 for respondent's failure to communicate with Paul and Pauline on a regular basis and to comply with their requests for information about the case. The DEC recommended the imposition of a reprimand.

* * *

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

In the Lopez matter, there is little doubt that respondent and his client were at odds over the need to produce the requested tax returns during the discovery phase of the case. Nevertheless, it is not so clear that respondent exhibited a lack of diligence in his handling of the case. Sincak's attorney filed motions to compel discovery, on at least three separate occasions between 1995 and 1996. The trial court entered discovery orders and granted Lopez several extensions of time to comply during this same time frame. Respondent argued that it was his client's foot-dragging that caused the delays in the case. Indeed, respondent put Lopez on notice that the tax returns were critical to the case as early as March 15, 1996, when he attached Trenchard's letter to his own. Trenchard's letter threatened to file a motion to strike Lopez' answer if the requested materials were not forthcoming. Respondent's letter also stated to Lopez that "the time to withhold the information is no longer here."

Obviously concerned that he had heard nothing from Lopez, on March 21, 1996, respondent "faxed" a handwritten note to Lopez, reiterating the importance of the tax returns and stating that "everyone" was waiting for the tax returns. Lopez' response to that correspondence illustrated his unwillingness to disclose his tax information, even at this late

date in discovery. Lopez wrote back on April 1, 1996, stating his opinion that the tax returns were irrelevant to the case and that producing them was not in his best interest. On April 15, 1996, the court entered an order striking Lopez' answer.

Thereafter, upon the granting of respondent's motion to reinstate the answer, similar discovery issues arose, this time with regard to the sufficiency of Lopez' answers to interrogatories. In each instance, respondent attempted to persuade Lopez to provide the requested discovery. Instead, Lopez either did not answer respondent's pleas or requested respondent to focus on the foreclosure case and the breach-of-contract claim.

On the issue of Lopez' deposition in December 1996, the record is unclear about when respondent first knew about its scheduling or, indeed, when it was actually scheduled. Therefore, the Board could not conclude that respondent's conduct was unethical when he notified Lopez of the deposition on December 2, 1996, two days prior to its scheduled date.

Finally, with regard to the breach-of-contract issue, it is clear that Lopez expected respondent to include it as a defense to Sincak's claims. If, as respondent urged, it was his litigation strategy not to press that claim, he should have notified Lopez of his intentions in that respect. The record is unclear if respondent failed to notify Lopez of his "strategy." Therefore, the Board was unable to make any findings on this issue.

In light of above, the Board determined that the evidence was not clear and convincing that respondent's conduct in Lopez amounted to lack of diligence, in violation of RPC 1.3. Therefore, the Board dismissed that charge.

With respect to the alleged violation of RPC 1.4 for respondent's failure to communicate with Lopez, the facts are in dispute. Lopez claimed that he had not received any correspondence from respondent prior to September 1996. The record contradicts that testimony, as Lopez admitted receiving some documents from respondent during late 1995 and early 1996. It appears, therefore, that respondent did not fail to communicate with Lopez during that time. Thereafter, respondent tried on numerous occasions to convince Lopez in letters, "faxes" and handwritten notes, to release the documents that Trenchard requested. The record is replete with evidence of respondent's attempts in this regard. Therefore, the Board dismissed the remaining charge of a violation of RPC 1.4.

In Zarodnansky, however, the evidence clearly and convincingly establishes that respondent's conduct was unethical. Respondent largely blamed his client for the delays in the case, rather than taking responsibility for those delays.

With regard to the allegation of lack of diligence, respondent was retained at the latest in August 1994, when he sent copies of the will to Paul and Pauline. By his own admission, respondent represented the estate, as well as Agnes, as executrix of the estate. Yet, respondent took no apparent action in the case until November 1994 when he sent a belated retainer agreement to Agnes and suggested a meeting regarding the preparation of inheritance tax returns. At this early juncture, he was already lagging behind the case and did not inform Agnes that the tax return was due on December 19, 1994.

Contrary to respondent's assertions, there is ample evidence that he failed to diligently pursue the estate matter. It is clear from the record that respondent was aware early on that Agnes had received an alleged deathbed gift from Joseph. Knowing the impact that her refusal to divulge that information would have on the inheritance tax return, respondent was fully aware that the estate could not be settled without her cooperation. In this context, diligence required that respondent either convince Agnes of the requirement of disclosing the gift or, failing that, terminate the representation because of the potential impropriety of Agnes' conduct and because of the existence of a rift between Agnes and the other beneficiaries of the estate, Paul and Pauline. Instead, respondent chose the path of least resistance, taking no affirmative action on the issue for over two years. His conduct in this regard amounted to a lack of diligence, in violation of RPC 1.3.

With regard to the alleged violation of RPC 1.4, respondent claimed that he kept Paul and Pauline reasonably informed about the status of the case. Respondent's contention should be rejected for two reasons. First, over the entire course of the representation he only corresponded with them twice about the substance of the case, in January 1995 and January 1996. Secondly, those letters did not inform them about the overdue taxes or the deathbed gift, information that was critical to allow them to make informed decisions regarding the case. The Board found, therefore, that respondent violated RPC 1.4(b) as well as (a).

The DEC suggested in the panel report that respondent may have violated RPC 4.1 (truthfulness in statements to others) for misleading Paul and Pauline in his correspondence

to them. In effect, by his silence on the gift and inheritance tax issues respondent may have misled them into believing that the case was moving along. However, RPC 8.4(c) more directly addresses this issue. Respondent characterized his four letters to Paul and Pauline as status updates. Yet, in the first letter respondent simply introduced himself as the attorney for the executrix. The second letter urged them to be patient in connection with the filing of the inheritance tax return and outlined general measures that he was undertaking in behalf of the estate. Respondent did not mention that the tax return was already overdue, thereby subjecting the estate to penalties. Over one year passed before respondent's third letter, dated January 31, 1996, in which he provided information about the status of the estate, but failed to mention that the taxes were then one year overdue. Respondent's final "update," dated January 31, 1997, simply stated that he had no progress to report. He failed to mention that there were serious obstacles to settling the estate or that the taxes were now more than two years overdue. Indeed, a reading of that letter leaves the impression that his handling of the estate was without incident. His final correspondence, dated October 6, 1997, merely announced his termination of the representation. Once again, respondent did not reveal the true status of the administration of the estate. However, not until the hearing panel's report was this issue raised, and then only in the context of RPC 4.1 (truthfulness in statements to others). Had the allegation been properly made, RPC 8.4(c) would have more appropriately addressed the issue. The Board found that, under the circumstances, respondent was not on notice that his conduct may have been unethical in this respect, in effect that he might have

been guilty of misrepresentation by silence, in violation of RPC 8.4(c). Accordingly, the Board determined to dismiss the untimely allegation of a violation of RPC 4.1.

With respect to the alleged violation of RPC 1.1(b), the DEC was correct to dismiss that charge, as the rule is generally invoked in cases of more than two instances of gross neglect. Such is not the case here.

An admonition is generally appropriate for one case of lack of diligence and failure to communicate with a client. See, e.g., In the Matter of Aslaksen, DRB 95-391 (1995) (admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in one matter. In a medical expert malpractice case, the attorney failed to serve answers to interrogatories, retain medical expert or advise client of ultimate dismissal, despite the client's requests for information); In the Matter of Onorevole, DRB 94-294 (1994) (admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in an insurance matter). For respondent's misconduct in Zarodnanski, the Board unanimously determined to impose an admonition.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 4/15/99

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael A. Amantia
Docket No. DRB 98-402

Argued: December 17, 1998

Decided: April 5, 1999

Disposition: Admonition

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:				9			

By Robyn M. Hill 5/5/99
Robyn M. Hill
Chief Counsel