

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-465

IN THE MATTER OF :
ROBERT L. MARTIN, :
AN ATTORNEY AT LAW :
:

Decision

Argued: January 23, 1997

Decided: April 8, 1997

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Barry D. Berman appeared on behalf of respondent.

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

This matter was before the Board based on a disciplinary stipulation, pursuant to R. 1:20-15(f), between the Office of Attorney Ethics ("OAE") and respondent. The stipulation established that respondent violated RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with client) and RPC 1.8(a) (conflict of interest - prohibited business transaction with client).

Respondent was admitted to the New Jersey bar in 1969. He maintains an office in Orange, New Jersey. He has no history of discipline.

According to the stipulation, over a fifteen-year period, respondent represented the grievant, Jean Wilcher, in a number of matters, including real estate matters, personal injury matters, a criminal matter and an estate matter.

In July 1991, respondent loaned Wilcher \$600 by issuing one of his attorney business account checks. Wilcher repaid the loan on or about September 12, 1991. Respondent conceded that he failed to disclose the terms of the transaction in writing to Wilcher, failed to advise her of the desirability of seeking independent counsel and failed to obtain Wilcher's written consent to the transaction. Respondent admitted that his actions in this regard constituted a violation of RPC 1.8(a) which prohibits an attorney from entering into a business transaction with a client unless: (1) the terms of the transaction are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner and terms that can be reasonably understood by the client; (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel; and (3) the client consents in writing to the transaction.

In October 1991, respondent obtained a \$2,000 loan from Wilcher. This was accomplished by Wilcher's endorsing over to respondent one of his business account checks that had been made

payable to Wilcher. Respondent partially repaid the loan in two installments: \$750 on January 9, 1992 and \$750 on February 11, 1992. The checks to Wilcher were drawn on respondent's business account. For repayment of the balance of the loan, respondent canceled a debt of Wilcher to one of his clients.

Again, respondent admitted that he failed to disclose the terms of the transaction to Wilcher in writing, failed to advise her of the desirability of seeking independent counsel and failed to obtain her written consent to the transaction. Respondent admitted that his actions violated RPC 1.8(a).

* * *

Wilcher retained respondent to represent her in connection with injuries sustained in an automobile accident on March 16, 1992. Between March 1992 and March 1994, respondent took no action in Wilcher's behalf. Thereafter, in March 1996, Wilcher contacted respondent about the status of her case. Respondent, who had not yet filed a claim in her behalf, believed that the statute of limitations had already run. He, therefore, advised Wilcher to retain an attorney to pursue a malpractice claim against him.

Afterwards, respondent discovered that, because Wilcher's claim involved an uninsured motorist, there was a six-year statute of limitations. When respondent made this discovery, he attempted

to contact Wilcher, but was unable to locate her. In the interim, Wilcher had retained a new attorney to pursue an uninsured motorist claim in her behalf and to file a legal malpractice suit against respondent. The record does not disclose the outcome of either proceeding.

Respondent admitted that his conduct in the personal injury matter involved violations of RPC 1.3 and RPC 1.4(a).

The OAE recommended that a reprimand be imposed.

* * *

Upon a de novo review of the record, the Board is satisfied that the stipulation contains clear and convincing evidence of unethical conduct on respondent's part.

As to respondent's improper business transactions with Wilcher, although respondent failed to comply with the dictates of RPC 1.8(a) and, therefore, violated that rule, Wilcher was not economically injured in either of the loan transactions with respondent.

In Wilcher's personal injury matter, respondent erroneously believed that the statute of limitations had lapsed. There is no evidence in the record to indicate whether Wilcher's new attorney was successful in pursuing a personal injury claim in Wilcher's behalf or whether there were sufficient grounds for a malpractice

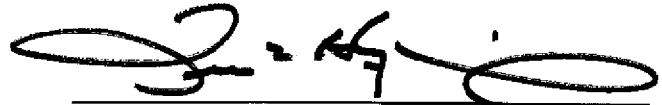
claim against respondent. Therefore, the record does not resolve whether Wilcher was harmed by respondent's inaction.

Based on In re Berkowitz, 136 N.J. 134(1994) (in conflict of interest cases, where no economic injury has occurred, a reprimand is the appropriate level of discipline) the Board unanimously voted to impose a reprimand.

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

Dated:

4/8/97



LEE M. HYMERLING
Chair
Disciplinary Review Board