

file

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March 17, 2006

CERTIFIED MAIL, R.R.R. & REGULAR MAIL

Samuel A. Malat, Esquire

REDACTED - CONFIDENTIAL

RE: In the Matter of Samuel A. Malat
Docket No. 05-315
LETTER OF ADMONITION

Dear Mr. Malat:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Specifically, you filed three lawsuits on behalf of plaintiffs in the United States District Court for the District of New Jersey, Camden Vicinage: Carlino v. Gloucester City High School, Docket No. 98-2799 (Carlino matter), Leuallen v. Paulsboro Police Department, Docket No. 99-4353 (Leuallen matter), and Mendez v. Draham, Docket No. 00-5643 (Mendez matter). In each matter, the United States District Judge assigned to the case imposed sanctions upon you pursuant to Rule 11 of the Federal Rules of Civil Procedure.

In the Carlino matter, which was filed on June 15, 1998, United States District Judge Stephen M. Orlofsky concluded that the plaintiffs' emotional distress and "whistleblower" claims were frivolous. The emotional distress claims were not based

upon a physical injury of sufficient severity, as required by section 59:9-1 of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to N.J.S.A. 59:9-7 (NJTCA). The "whistleblower" claim, which was brought pursuant to the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -8 (CEPA), did not allege that the high school principal had engaged in illegal conduct, and the plaintiff did not disclose any accusation of illegal conduct to a public body, as required by the statute.

In the Leuallen matter, which was filed on September 13, 1999, United States District Judge Jerome B. Simandle concluded that the plaintiffs' federal race-discrimination, Thirteenth Amendment, and state law claims were frivolous. Specifically, the complaint failed to allege that the plaintiffs were members of a racial minority, that defendants intended to discriminate against them because of their race, and that the discrimination concerned one or more of the activities enumerated in 42 U.S.C. § 1981 (Section 1981). The Thirteenth Amendment claims failed because none of the plaintiffs had been forced into slavery or involuntary servitude. The state law claims were unsupported by medical evidence of permanent physical or psychological injury, as required by the NJTCA.

In the Mendez matter, which was filed on November 17, 2000, Judge Orlofsky deemed frivolous the plaintiffs' claims against certain defendants, based upon the violation of their federal civil rights. The claims failed because these defendants were federal agents and states and their officers, who are not "persons" with the meaning of 42 U.S.C. § 1983 (Section 1983).

The Board has determined that you violated RPC 3.1 when you asserted state law claims in the Leuallen matter that did not comply with the NJTCA, after you already had been sanctioned in the Carlino matter for asserting state law claims that were frivolous for the same reason, that is, the lack of an injury supported by medical evidence.

In imposing only an admonition, the Board did not consider the other claims to have been frivolous. While your conduct in asserting some of those claims might have been careless, the Board did not believe that any of them was filed as the result of ill motive on your part.

Your conduct adversely reflected not only upon you as an attorney but also upon all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, it will be taken into consideration.

The Board has also directed that the cost of the disciplinary proceedings be assessed against you. An affidavit of costs will be forwarded under separate cover.

Very truly yours,



Julianne K. DeCore
Chief Counsel

JKD/tk

c: Chief Justice Deborah T. Poritz
Associate Justices
Stephen W. Townsend, Clerk, Supreme Court of New Jersey
Gail G. Haney, Deputy Clerk, Supreme Court of New Jersey
(w/ethics history)
Mary J. Maudsley, Chair, Disciplinary Review Board
David E. Johnson, Jr., Director, Office of Attorney Ethics
William S. Skinner, Chair, District IV Ethics Committee
John M. Palm, Secretary, District IV Ethics Committee