

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 99-306

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IN THE MATTER OF  
HOWARD M. DORIAN  
AN ATTORNEY AT LAW

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Decision

Argued: November 18, 1999

Decided: July 17, 2000

Bennet D. Zurofsky appeared on behalf of the District VB Ethics Committee.

Anthony Ambrosio 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 filed by the District VB Ethics Committee ("DEC"). The six-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect) (count one); RPC 1.3 (lack of diligence) (count two); RPC 1.4(a) (failure to keep a client reasonably informed about the status of the matter) and RPC 1.4(b) (failure to explain a matter to an extent reasonably necessary to permit client to make informed decision about representation) (count three); RPC 8.1(a) (false statement

of material fact in connection with a disciplinary matter) (count four); RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority) (count five); and RPC 8.4(a) (attempt to violate the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count six).

Respondent was admitted to the New Jersey bar in 1978. At the time of the conduct in question, respondent maintained law offices in Irvington and Cliffside Park, New Jersey.

Respondent was admonished in August 1995 for failure to take action when his client's personal injury matter was mistakenly dismissed as settled, failure to promptly turn over the client's file to her new attorney and failure to reply to the ethics authority's requests for information about the grievance. In the Matter of Howard M. Dorian, Docket No. DRB 95-216 (August 1, 1995).

At the DEC hearing, the presenter withdrew the charges in counts four, five and six of the complaint.

Respondent stipulated that his conduct in this matter involved violations of RPC 1.3 and RPC 1.4. The question is whether respondent's conduct also rose to the level of gross neglect.

On September 14, 1993 Viola Drew slipped and fell in her apartment building, which was owned by the Irvington Housing Authority. Drew fell down cracked and crumbling steps while carrying a load of laundry to the laundromat. Drew testified that the landlord was

supposed to repair the steps and the stoop. Indeed, there had been yellow tape wrapped around the railing to indicate a dangerous situation. Although Drew injured her back and knee, she did not seek immediate medical attention. Instead, she treated herself with aspirin and warm compresses. Several days later, she went for treatment at the emergency room of a local hospital. Drew never filed an incident report and there were no witnesses to her accident.

Ten days after the accident, on September 24, 1993, Drew met with respondent. Respondent's recollection of what actually transpired six years ago was not clear. For a portion of his testimony, respondent relied on his general office practices, rather than on his specific recollection of events.

Respondent interviewed Drew on September 24, 1993. Because a public entity was involved, he was required to file a notice of claim under the New Jersey Tort Claims Act. Respondent did so within the prescribed time. At some point, an insurance adjuster came to respondent's office to take a statement from Drew. According to respondent, he had prepared Drew for the meeting with the adjuster. By letter dated October 26, 1994 respondent learned that Drew's claim was denied. Respondent alleged that thereafter he had several conversations with the adjuster but was unable to obtain a settlement.

On September 13, 1995, respondent filed a complaint on behalf of Drew in order to preserve the statute of limitations and to enable her to avail herself of any pertinent litigation

opportunities. Respondent, however, never served the complaint on the defendant, the Irvington Housing Authority.

Respondent located a note in his file indicating that, after the filing of the complaint on October 20, 1995, his office attempted to contact the adjuster, despite the earlier denial, to see if a settlement could be reached. Respondent took no further action in the matter, however, as a result of which the case was dismissed on May 17, 1996. It is not known how or when Drew became aware of the dismissal.

Respondent testified that Drew was insured by Medicaid and that, therefore, the payment for her medical treatment was guaranteed. He claimed that he had informed Drew that there were many problems with her case, including a prior injury, that she had never filed an incident report, that there were no witnesses and that the matter involved a tort claim action. Respondent also believed that he advised Drew about the costs involved in litigating the matter, including the costs of an expert, because that was his standard practice. At the time Drew retained respondent, she executed a retainer agreement on a standard Allstate form that set forth the client's obligation for litigation costs. Respondent did not sign the retainer. According to respondent, he paid all of the costs associated with Drew's case and did not obtain any reimbursement from her. The costs included the filing of the complaint, certified mail and other miscellaneous costs.

Drew testified that on her own initiative she took pictures of the accident site and forwarded copies of the pictures to respondent. Drew added that, when she took the pictures, she removed the yellow danger tape in order to improve the view of the steps.

Drew stated that, after giving her statement to the insurance adjuster, she was only in contact with respondent on a few occasions. She met with him approximately five times in person and only spoke to him on the telephone a couple of times. Most of her communication was through respondent's secretary. Drew testified that, when she did have contact with respondent, he always assured her that her case looked good.

By way of mitigation, respondent alluded, in the answer, to his family's serious health problems during the relevant time period, including his father's diagnosis of prostate cancer and quintuple coronary bypass surgery. The other serious health problems cited by respondent, however, occurred after Drew's case had been dismissed.

Because respondent stipulated that his conduct violated RPC 1.3 and 1.4, the DEC only addressed count one, which charged respondent with a violation of RPC 1.1(a). The DEC found such a violation. The DEC found that, although respondent properly filed the notice of claim with the Township of Irvington, after he filed the complaint most, if not all, of the activity on the file stopped. Respondent never served the complaint on the defendant, there was no discovery exchanged and the matter was eventually dismissed on the court's own motion. Respondent took no action to have the matter reinstated. He failed to conduct any formal investigation into Drew's accident, failed to reply to the court's notice that the

matter was dismissed and failed to advise the client of the court's notice of intent to dismiss the case, as well as of its ultimate dismissal.

The DEC considered respondent's prior ethics history. However, the hearing report erroneously stated that respondent had received a reprimand, instead of an admonition. The DEC also took into account respondent's assertions that the complaint in the matter arose during the same time period of his earlier misconduct, his significant personal problems at the time, the disruption of his regular office practices because of flooding in his office and his inability to promptly obtain his mail. The DEC further considered that respondent offered to make a formal apology to Drew and to provide to her a complete copy of his file so that she could pursue any remedies against him. This apparently occurred "off the record." The DEC, thus, found violations of RPC 1.1(a), RPC 1.3 and RPC 1.4.

The DEC recommended the imposition of a reprimand.

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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.

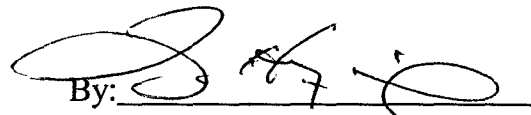
As noted earlier, the DEC properly dismissed counts four, five and six. Because respondent stipulated to violations of RPC 1.3 and RPC 1.4, we need only determine whether respondent's conduct rose to the level of a violation of RPC 1.1(a). From the testimony

presented, Drew apparently did not have a very strong case. Respondent did take some action in her behalf, including timely filing a notice of tort claim and a complaint, as well as attempting to negotiate a settlement with the insurance carrier. Afterwards, however, respondent failed to pursue Drew's matter. He failed to serve the defendant or to advise his client about the status of her case — the dismissal — thereby precluding her from obtaining alternate counsel. We, thus, find that respondent's conduct violated RPC 1.1(a), RPC 1.3 and RPC 1.4 and unanimously determine that a reprimand is the appropriate form of discipline in this matter. See e.g., In re Wright, 154 N.J. 7 (1998) (reprimand for lack of diligence and failure to communicate with clients in two matters; attorney previously admonished for failure to communicate with clients and failure to adequately explain to client the contents of a retainer agreement in a bankruptcy matter); In re Gavin, 153 N.J. 356 (1998) (reprimand for gross neglect in a personal injury matter resulting in the running of the statute of limitations and failure to communicate with client); and In re Paradiso, 152 N.J. 466 (1998) (reprimand for lack of diligence in personal injury matter resulting in dismissal of case with prejudice, and failure to communicate with client; attorney was previously the subject of a diversion for minor misconduct that included gross neglect and failure to communicate). One member did not participate.

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

Dated:

7/27/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

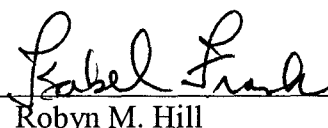
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**Disposition: Reprimand**

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				
<b>Total:</b>			8				1

By  10/31/00  
Robyn M. Hill  
Chief Counsel