SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-093

IN THE MATTER OF

RICHARD D. CARUSO

AN ATTORNEY AT LAW

Decision

Argued: June 19, 1996

Decided: April 8, 1997

Robert A. Ballou, Jr., appeared on behalf of the District IIIA 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 IIIA Ethics Committee (DEC).

Respondent was charged in three formal complaints with misconduct in four matters. Specifically, in the Daniels, Ormsby and Tribuzio matters, respondent was charged with violations of RPC 1.1 [presumably (a), gross neglect], RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 3.2 (failure to expedite litigation).[1] The complaint cited no specific rules in the Godesky matter. Instead, it states that "respondent does engage in a pattern of lack of diligence

[1] In the Tribuzio complaint, the right side of the page was not properly copied and a portion of the allegations are not fully legible. The reference to RPC 1.3 is presumed to be intended by the "1" that is visible.

and competence as well as failing to communicate with his client regarding the status of litigation." Presumably, the same rules as those cited above are involved.

Respondent did not file an answer to the complaints. On the fifth day of hearing, at the beginning of respondent's case, he sought to submit an answer to the complaints. The panel chair noted that respondent was out of time to file the answer. The DEC did not accept the document.

* * *

Respondent was represented by Anthony J. LaSala, Esq. at the first hearing date. LaSala was retained the day before the hearing. Respondent, who was allegedly confused about the hearing date, had contacted LaSala several days earlier but the latter had been out of town. At the start of the first hearing, LaSala requested an adjournment to allow him time to prepare for respondent's representation. Given the age of the complaints (one had been filed nearly two years earlier), respondent's failure to retain counsel until the eleventh hour and the fact that the DEC secretary's office had confirmed the hearing date by phone with respondent, his request for an adjournment was denied. The panel chair also noted that respondent had been granted previous adjournments to get counsel and for health reasons. Respondent proceeded pro se on the subsequent four hearing dates.[2]

At the beginning of the hearing, respondent's counsel argued that the presenter should recuse himself because he was biased against respondent, seemingly due to respondent's poor relationship

[2] At the beginning of the fourth day of hearings, respondent asked for appointed counsel. The panel chair denied respondent's request, noting that respondent was not indigent and that respondent could have obtained counsel on his own.

with the presenter's partner, including a physical altercation between them. The panel chair noted, among other things, that the presenter had been involved in these matters since 1991; if respondent "felt he wasn't getting a fair shake, he should have said something then." The presenter did not recuse himself. The bias issue was raised repeatedly during the hearing.

* * *

Respondent was admitted to the New Jersey bar in 1986. He maintains an office in Brick Township, Ocean County. Respondent has no history of discipline.

The facts in these matters are as follows:

The Godesky Matter (District Docket No. IIIA-91-37E)

On August 28, 1984, Jean Godesky slipped and fell in the ladies' room of the Lakehurst naval base where she was an employee. She sustained significant injuries. Godesky was initially represented by two attorneys: one looked into a possible civil action and the other pursued a federal workers' compensation claim. The attorney pursuing the civil action found no basis for suit and apparently none was filed. Exhibit R-38. It seems, however, that a federal workers' compensation suit was filed and that Godesky's claim was denied. Exhibit R-39. According to Godesky's testimony, the attorney pursuing the federal action, Barry D. Isanuk, Esq., told her that he was not making progress and suggested that she hire another attorney.

On or about April 3, 1987, Godesky retained respondent. Although she stated that she signed a retainer agreement, the record shows none. It was Godesky's understanding that respondent would

"file and start a lawsuit with the Federal government." As noted above, however, the claim had already been filed and denied before Godesky hired respondent.

Godesky paid respondent $50 for the initial consultation. There was no discussion of additional fees. Approximately one year after Godesky retained respondent, he contacted her and asked for $1,000 to continue his "research." Godesky paid the additional $1,000.

The record is murky with regard to respondent's communication with Godesky. It appears that, early in the representation, respondent sent to Godesky copies of letters to the government and to her former attorneys; he also forwarded to her letters received from those parties. In addition, Godesky called respondent regularly and met with him several times during the course of the representation. In Godesky's own words, after she gave respondent the $1,000, she made "a nuisance of [herself]," calling respondent frequently. At some point, however, he stopped returning her calls. In or about 1989, Godesky left a message on respondent's answering machine, asking that he turn over her file to her, which he did. With regard to Godesky's claims that he failed to communicate with her, respondent testified that he had numerous communications with Godesky, her husband, her son and her former and subsequent attorneys. He also produced correspondence to Godesky.

There was some discussion in the record about the fact that respondent took a fee from Godesky in a workers' compensation matter where a statutory fee would have been awarded. (There is no reference to this issue in the complaint). Respondent testified that this fee was not for filing a federal workers' compensation claim:

> When we took the case on it was with the understanding that we were investigating the circumstances of her situation which my understanding at that time was uncertain, whether or not there was malpractice by the attorney that had represented

her previously, whether or not there was a Federal workers' compensation claim indicated or an appeal, whether or not there was a third-party case. We weren't really sure what was going on and then we weren't sure why it was going on. We investigated.

[5T538][3]

Respondent stated that Godesky came to him with "no specific purpose in mind." He added, however, that the status of her workers' compensation claim was a "major concern." Respondent contended that, after his office investigated the situation, it was determined that Godesky might be able to renew her compensation claim before having to resort to an appeal of the initial denial of the claim. They tried to put together a new case. It was respondent's recollection that, although they refiled the claim, they received an adverse ruling. Respondent then referred Godesky to an expert in federal workers' compensation law, who was also unable to obtain a favorable result.

Godesky testified that the Lawyer's Referral Service referred her to respondent, presumably an expert in federal workers' compensation law. In fact, respondent had never handled a federal workers' compensation case "from the beginning to end." He had, however, handled "quite a few" state workers' compensation cases. The record is unclear on the alleged misrepresentation about respondent's qualifications.

In January 1991, Godesky filed a request for fee arbitration. As a result of that proceeding, respondent was directed to return $1,000 of the $1050 he had been paid. Although there was some question of whether respondent timely repaid Godesky, he ultimately refunded her $1,000. The panel chair in the fee arbitration proceeding referred the matter to the DEC for an investigation.

---

[3] 2T refers to the transcript of the hearing before the DEC on June 8, 1994. 5T refers to the transcript of hearing before the DEC on August 3, 1994. The pages are numbered sequentially. For example, 2T begins with page 119.

* * *

At the conclusion of the ethics hearing, the DEC determined that respondent had violated RPC 1.1, RPC 1.3 and RPC 1.4.

The Daniels Matter (District Docket No. IIIA-91-40E)

On July 31, 1987, Dawn Daniels was involved in a three-vehicle accident. Daniels asked respondent, with whom she had a social relationship, to represent her in the ensuing personal injury action. The executed retainer agreement and the authorization to release information for her case are dated June 15, 1989. Exhibit R-20. Daniels and respondent reviewed her insurance policy and discussed the tort threshold. Daniels testified that she gave respondent evidence that she had met the threshold.

Daniels had a second accident in January 1989. According to respondent, she was represented in both cases by Silvio Silvi, Esq., a mutual friend. Daniels was not satisfied with Silvi's representation and asked respondent to look into her cases. Respondent contended that he discussed the matter with Daniels and Silvi, whereupon it was agreed that Silvi would handle the suit in connection with the 1989 accident; at the conclusion of that case, respondent would pursue a claim for the 1987 accident.

Respondent explained that, if Daniels' injuries from each accident could not be distinguished and if she was compensated for her total injuries, he thought she stood little chance of prevailing a second time. According to respondent, on an undisclosed date Silvi settled the 1989 accident case for $10,000. He failed to tell respondent of the settlement. Thereafter, respondent heard from the

presenter about Daniels' grievance. Respondent contacted Silvi and began the proceedings in the 1987 case.[4]

Although the underlying events are nebulous, Exhibits R-22 through R-32 reveal respondent's activity in Daniels' behalf in 1992 and 1993. It was respondent's belief that there were twenty court appearances and that there was some difficulty in serving at least one of the two defendants. Respondent added that that defendant, apparently the individual responsible for the accident, was uninsured. Respondent also recalled additional difficulties as a result of his refusal to accept the insurance company's representation that the defendant was uninsured. According to respondent's testimony, despite several requests to the insurance company for the production of documentation, he was unable to resolve whether the defendant's policy had been properly canceled. Respondent, therefore, filed suit to force the insurance company to supply the information he wanted.

In February 1993, respondent filed a motion for default against the defendant, which was granted. A judgment for $10,000 was entered in or about June 1993.

Daniels filed her ethics grievance on or about April 8, 1991, over two years before the June 1993 judgment. She alleged that respondent was negligent in the handling of her case, failed to return her calls and those of her treating chiropractor and failed to complete her case. The formal ethics complaint was filed almost one year before the June 1993 judgment. Respondent testified that, because Daniels filed the grievance while he was pursuing her case, he did not pursue the default judgment.

---

[4] There is no discussion in the record about the statute of limitations.

Respondent told Daniels that, once they filed the $10,000 judgment against the defendant-driver, they would seek a recovery from Daniel's insurance company under her uninsured motorist endorsement. By letter dated July 27, 1993, respondent informed the carrier of the judgment and put it on notice of Daniels' uninsured motorist and underinsured motorist (UM/UIM) claim. Exhibit R-32. Respondent was unable to provide evidence of earlier notice to Daniels' carrier, despite notification to him long before that date that the defendant was uninsured. Respondent did not attempt to execute on the default judgment against the defendant. Respondent failed to pursue the claim with Daniel's UM/UIM carrier beyond his letter of notice of the claim.

Daniels testified that respondent failed to communicate with her about the progress of her case. When asked about her understanding of the progress of her case, Daniels stated that she had "no understanding;" she "just kind of forgot about the case." Respondent countered, however, that he was responsive to Daniels' inquiries and kept her apprised of significant developments.

Daniels continued to call respondent for assistance after she filed her ethics grievance. In fact, respondent satisfactorily represented her in at least two matters since the personal injury case in question. Daniels unsuccessfully attempted to withdraw her grievance after it had been filed.

* * *

The DEC determined that respondent had violated RPC 1.1, RPC 1.3, RPC 1.4 and RPC 3.2.

The Ormsby Matter (District Docket No. IIIA-92-37E)

The grievant in this matter, Bernadette Ormsby, did not testify before the DEC. Ormsby lives in Florida and was reluctant to travel to New Jersey for the hearing. For reasons not addressed in the record, the presenter made no attempt to have Ormsby testify via telephone. The only documents submitted by the presenter as exhibits in this matter were Ormsby's original grievance and a copy of the formal complaint, which essentially restated the grievance. Exhibits C-14 and C-15.

Ormsby was involved in an automobile accident on March 4, 1989. She retained respondent to pursue the matter. The complaint alleged that respondent failed to communicate with Ormsby about the status of her personal injury action, despite her numerous calls to him, and failed to take any action to bring about a prompt resolution of the matter. The complaint also alleged that respondent failed to communicate with the DEC investigator.[5]

Ormsby filed her grievance on or about July 30, 1992. Respondent settled this matter for almost $23,000 in December 1992. The documents evidencing that settlement, although briefly discussed, are not part of the record. Respondent was unable to produce any letters to Ormsby about the status of her case prior to her filing the grievance with the DEC. He contended that they communicated by telephone.

Respondent sought to introduce an allegedly exculpatory letter that Ormsby's mother wrote and sent to Steven Secare, Esq., the secretary of the DEC. Respondent apparently was attempting to introduce the letter as evidence that the presenter had not turned over exculpatory evidence to

[5] The complaints in Ormsby and Tribuzio, below, state that "Grievant has also failed to respond to the investigator assigned to this matter." It is presumed that the complaint meant to say "respondent."

respondent. When respondent was unable to demonstrate that the presenter had ever been in possession of the letter, the document was not admitted into evidence. Respondent had not planned to call Ormsby's mother as a witness, believing that the letter would be admitted into evidence and that that would be sufficient. Respondent also contended that it was not until the last day of the hearing that he determined whom he needed to call as a witness in all of the matters. Respondent's request to call his witnesses at the end of the final hearing date was refused.

* * *

Although the DEC did not cite any specific RPCs, it found that

> [b]ased on the initial Grievance, the investigative report and the incredible testimony of the Respondent (See transcript pages 699 through 700), [there is] clear and convincing evidence that the Respondent failed to keep the Grievant adequately informed as to the status of her personal injury action, and further failed to diligently pursue her interests until the formal Grievance was filed.[6]
>
> [Hearing Panel report at 5]

The Tribuzio Matter (District Docket No. IIIA-92-33E)

The grievant, Olga Tribuzio, testified that she retained respondent on or about August 21, 1987 in connection with a matrimonial proceeding. She paid him $1,000 on that date. Mrs. Tribuzio's then husband, John Tribuzio, had moved to Costa Rica. According to Mrs. Tribuzio's testimony, she and Mr. Tribuzio had essentially worked out a property settlement. Specifically, they

[6] The DEC erroneously stated that respondent had been charged with a violation of R.1:20-3(h). In January 1994, when the complaint was filed, that rule referred to the requirements for filing a formal complaint, such as who may sign the complaint.

had agreed that she would retain the marital house. According to Mrs. Tribuzio, she had discussed alimony with respondent, who explained that, given Mr. Tribuzio's location, the support order could not be enforced. Mrs. Tribuzio paid respondent another $1,000 on November 2, 1988 to get "the house straightened out." Nonetheless, respondent did not resolve the marital house issue. Furthermore, although a divorce was granted, respondent failed to follow up to obtain the final judgment.

Mrs. Tribuzio contended that respondent failed to communicate with her adequately. She claimed that she made numerous calls to him, many of which were not returned. Mrs. Tribuzio also stated that she frequently visited his office without an appointment and that, although respondent met with her "sometimes," she "felt like a fool" because he would take calls from other clients when meeting with her. Mrs. Tribuzio testified that, after an undisclosed time, respondent did not return her calls. She recalled, however, receiving some written communication from respondent during the course of the representation. At undisclosed times, Mrs. Tribuzio contacted her local newspaper and radio station to get assistance in resolving the matter. She also "picketed" the courthouse and contacted the judge.

Respondent's testimony set forth a very different set of facts.[7] He stated that Mrs. Tribuzio had not initially retained him in connection with the matrimonial proceeding. Rather, she had sought his services in connection with the refinancing of the mortgage on her house.[8] Respondent asserted

---

[7] On a number of occasions during the hearing, respondent sought to extract evidence that Mrs. Tribuzio had forged Mr. Tribuzio's name on the loan application documents. Respondent's intention was to call Mrs. Tribuzio's credibility into question and to evidence his state of mind during the representation. The panel did not allow respondent to pursue this line of questioning.

[8] Although not part of the record before the Board, a letter dated June 5, 1987 from the mortgage company to respondent about the Tribuzios was identified during the hearing, evidencing respondent's involvement before the

that it was during a title search incident to the refinancing that he had learned of a lien on the house stemming from a judgment against Mr. Tribuzio in favor of his first wife, Marie, for failure to make support payments. According to respondent, the matrimonial proceeding had arisen in the context of attempting to resolve the outstanding lien on the Tribuzios' house. In August 1987, he had agreed to file a complaint for divorce in Mrs. Tribuzio's behalf, which he had done on September 25, 1987. Mr. Tribuzio did not answer the complaint.

At a court proceeding on February 25, 1988, the Honorable Robert A. Fall, P.J.F.P., granted the divorce. For reasons not clear from the record, the court did not, however, sign a final judgment of divorce. Respondent did not recall if he had submitted a form of judgment to the court. He stated that he was "almost certain" that he had done so, but that the court would not sign it "until something else was resolved." Respondent believed that he needed to supply a certification that Mr. Tribuzio was not in the military service. Furthermore, it was respondent's belief that he

> submitted a form of order when [he] went down for the divorce proceeding which included language distributing the house to Mrs. Tribuzio which [he believed] the judge said he was not going to sign or wasn't able to sign because of the other attorney's right to be heard on equitable distribution.
>
> [5T752]

Respondent testified at length about the course of events in this matter. The central issue addressed was his belief that Mrs. Tribuzio was better off waiting to pursue the resolution of the matrimonial matter. Respondent testified as follows:

> [Mrs. Tribuzio] agreed. Now, over the course of time she changed her mind I guess because she called me and said, you know, I would like to get my divorce papers and I said to her, okay, but I want you to know if you get the divorce papers, to get the divorce papers I believe they are going to pull the file and they are going to open the

---

time suggested by Mrs. Tribuzio.

file and look into the file and they are going to see there was an order staying the sale that should have been vacated,[9] that this issue should have gone to litigation, was probably going to send it down for litigation. You're going to be embroiled in litigation. You may lose the house. You may lose the house money paying for litigation. Is it absolutely necessary to get this piece of paper? She said no.

* * *

It was not that I neglected to get her divorce papers. I intentionally didn't get her divorce papers because it was agreed between us that we should not do that. [5T558-560]

Furthermore, given the depressed real estate market and the fact that Mrs. Tribuzio had tenants paying rent, respondent felt that it was better to wait both to pursue the equitable distribution issue and to get the final judgment of divorce. Respondent's advice to Mrs. Tribuzio was to maintain the status quo. Respondent did get a deed dated December 5, 1988 from Mr. Tribuzio to Mrs. Tribuzio giving her his share of the house, which deed, according to respondent, Mr. Tribuzio would not supply until he was divorced from Mrs. Tribuzio.

The following exchange took place between respondent and Mrs. Tribuzio:

Q. Do you remember the motion regarding the judgement against your husband by his first wife? Do you remember that in Monmouth County?

A. Yes, I remember something like that.

Q. Do you remember they wanted to increase the amount to well over fifty thousand dollars, do you remember that, for nonsupport?

A. I don't remember it, no.

---

[9] Mr. Tribuzio's first wife's attorney had moved for a sheriff's sale to satisfy her judgment.

Q. Do you remember me telling you about the lien against the house, that being the lien against your house? You don't remember that?[10]

A. No.

Q. Do you remember me telling you that I was concerned that the house would be sold and that your husband's portion of the house would be used to satisfy that judgment, do you understand that?

A. Yes.

Q. And do you remember me telling you that there was a sheriff's sale scheduled for your house where they were going to take and sell it?

A. Yes.

Q. Do you remember me telling you I went there and stayed the sale?

A. Yes.

Q. And do you remember me telling you they will never try to sell the house again thereafter, do you remember that?

A. Yes, I remember that.

Q. And I told you it would be better not to make two [sic] many inquiries because then they would be inclined to sell your house and you might loose [sic] that money?

A. Yes.

[2T257-259]

Indeed, Mrs. Tribuzio testified that respondent had explained that, in his opinion, she could be forced to sell her house if they went back into court. She stated, however, that, although she understood what respondent was trying to do, she "wanted to get it over with." Mrs. Tribuzio might

---

[10] Mrs. Tribuzio testified that she lost money during attempts to refinance her house because respondent failed to tell her that there was a lien on the house.

not have understood that the judgment on the house would have a detrimental effect on her desire to have sole ownership of the property.

In evidence are two letters from the court: one to respondent and one to Mrs. Tribuzio. Exhibit C-10.[11] In pertinent part, a December 7, 1989 letter to respondent, apparently prompted by Mrs. Tribuzio's visit to the courthouse, stated as follows:

> In reviewing various files, it appears that there is an unresolved issue in this case. The minutes reflect that on February 25, 1988, a Final Judgment of Divorce was granted to your client, but apparently no form of Judgment has been submitted. Further, it appears that defendant was previously married and that there may be issues of equitable distribution of the former marital domicile in that the papers in the file indicate that Marie Tribuzio, the first wife, has a judgment against Mr. Tribuzio for unpaid alimony and she may have already sought a sale of the house through the execution process.
>
> You had filed a motion seeking distribution of the marital domicile entirely to plaintiff and on November 18, 1988 the minutes reflect the Court directed compliance with Rule 4:4-5 with respect to service of the Notice of Equitable Distribution by publication, but I also see no Order in the file respecting that either.
>
> The problem, of course, is the debt/judgment of Mr. Tribuzio in favor of Marie Tribuzio. It was entered on June 21, 1985 according to the file, which was, therefore, a debt acquired during the marriage. Clearly, in this case, it would be deemed to be his responsibility under equitable distribution, but would remain a lien against any equitable distribution to be received by defendant.
>
> If the matter has not otherwise been resolved, it appears you would have to: (1) submit the form of Final Judgment of Divorce simply dissolving the marriage; (2) submit an Order from the November 18, 1988 hearing authorizing publication of a Notice of Claim for Equitable Distribution giving notice to defendant of an equitable distribution hearing . . . . (3) notice of the hearing must be given to Marie Tribuzio and her attorney, since she has the right to be heard on equitable distribution of that home since her debt must be distributed as well . . . .
>
> Of course, all of the above may be moot if the matter has otherwise been resolved.
>
> [Exhibit C-10]

---

[11] The court's letter to Mrs. Tribuzio, dated March 12, 1991, enclosed a copy of the court's December 7, 1989 letter to respondent.

The court's letter seems to support respondent's testimony as to both the problems in the matter and respondent's strategy.

With regard to his alleged failure to communicate with Mrs. Tribuzio, respondent explained that she would appear at his office without appointments and call "constantly." Respondent claimed that he "indulged" her, but that eventually he had to restrict his communication with her, at which she undoubtedly became angry. Respondent also asserted that he explained his position to her and to a number of people that had called him in her behalf.

Mrs. Tribuzio retained another attorney in or about 1992. She received the final judgment of divorce two years later, on April 11, 1994.

* * *

In 1993, this matter was the subject of a fee arbitration proceeding. The fee arbitration committee deemed respondent's fee to be reasonable.

The DEC made no specific findings, but stated that

> [b]ased upon the testimony of the Grievant, the incredible testimony of the Respondent and the Respondent's file completely devoid of correspondence to Ms. Tribuzio in response to any of her phone inquiries or timely to adequately advise her on the status of the case [sic]. Furthermore, it is apparent from the correspondence of the court, the Respondent had failed to complete the litigation on behalf of the Grievant.
>
> [Hearing panel report at 6]

Cooperation with the DEC

As noted above, the complaints in the Tribuzio and Ormsby matters referred to respondent's failure to reply to the investigator's requests for information. Respondent was not, however, charged with a violation of RPC 8.1(b) in either of these cases. The record makes no specific reference to unreturned telephone calls to the investigator or ignored requests from the investigator for meetings or documents.

During respondent's cross-examination, the presenter asked to see the files, which respondent had with him as directed by subpoena. Respondent refused, on the basis that the presenter had already rested his case.

As noted above, respondent did not file an answer to the complaints. He stated:

> With regard to C-1, the formal complaint, apparently, I would like the committee to know that this complaint as it is comprised now is foreign to me. It is a compilation of various things that comply [sic] whatever on the various years regarding this matter and because of the confusion I had with regard to who actually was complaining about what, I wasn't really sure how to file an answer, so I waited until the hearing to be presented with evidence and find out exactly what was being said so I could respond specifically.
>
> [5T482]

* * *

In conclusion, the DEC noted that

> [t]he hearing panel sat through five days of tedious testimony and based upon the panel's observation of the Respondent's behavior, his completely unorganized files, his repeated unpreparedness, his constant animosity towards the hearing panel and his constant behavior which could only be characterized as paranoid, lends [sic] this panel to unanimously recommend a substantial suspension of the Respondent. The transcript is replete with instances of bizarre behavior of the Respondent.

> While each incident of client neglect or lack of communication in and of itself may not be particularly egregious, the constant thread and pattern of the Respondent's failure to return phone calls, failure to correspond with the client, failure to diligently pursue his client's interest is [sic] egregious. Furthermore, it troubled the panel even more when the Respondent was questioned by the lay panel member and asked why the Respondent did not seek the aid or guidance of other attorneys knowledgeable in the particular fields for help, (when such was readily available in Ocean County) and the response was that he did not feel he needed any help or assistance from other counsel. The denial of a problem with any of the files that are subject matter of the formal complaints is therefore deeply troubling. If the Respondent is unaware or unwilling to accept that there has been some failing on his part, the panel cannot expect this problem not to reoccur.
>
> [Hearing panel report at 6-7]

The DEC recommended a "substantial suspension" and a proctorship for at least one year, after reinstatement.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The Board cannot agree, however, with several of the DEC's findings.

Specifically, the presenter failed to obtain Ormsby's testimony by telephone for unknown reasons. Without that testimony, there is simply not enough information in the Ormsby record to find by clear and convincing evidence that respondent was guilty of misconduct. Accordingly, the Board determined to dismiss this matter.

In Daniels, the Board was unable to agree with the DEC's finding that respondent violated RPC 1.1(a), RPC 1.4 and RPC 3.2. That is not to say, however, that respondent was without fault. Although respondent did not neglect Daniels' case throughout the representation, it was only after

the grievance was filed that he took some meaningful action. There is no plausible explanation for the extensive delay in resolving that matter. Respondent's statement that he was waiting for Silvi to complete his work on the 1989 accident may or may not have merit. Even, however, if the delay could be explained or excused, it is undeniable that respondent pursued the action in Daniels' behalf to a point and then simply "dropped the ball." Although his failure to pursue the default judgment against the defendant may make some sense (depending on what information, if any, respondent had about the defendant's assets and whether he could be located), respondent had no explanation for his failure to proceed with the uninsured motorist claim. It is, thus, undeniable that respondent was guilty of lack of diligence, in violation of RPC 1.3.

Similarly, in Godesky, the client believed that respondent would pursue a workers' compensation claim, although it is unclear what respondent could have done for her at that late date. Even if respondent's testimony was truthful, that is, that he was retained simply to investigate any options available to Godesky, respondent apparently did not make that sufficiently clear to his client and his efforts in her behalf were less than diligent. On the existing record, the Board, contrary to the DEC, did not find clear and convincing evidence of a violation of RPC 1.1 and RPC 1.4 and found only a violation of RPC 1.3 in this matter.

In the Tribuzio matter, Mrs. Tribuzio recalled respondent's explanations to her about his concerns in that case. Indeed, it makes no sense for respondent to have done so much work in the matter and then to have failed to submit a proposed final judgment of divorce, unless, of course, the equitable distribution issue was a real factor in his decision. It is not clear from the record if the court would have signed the final judgment prior to the resolution of the equitable distribution issues. In any event, despite respondent's belief that it was better not to disturb the status quo, the

matter could not be left unresolved indefinitely. Accordingly, respondent violated RPC 3.2 for his failure to expedite litigation. The Board determined to dismiss the remaining allegations against respondent.

There is no question that respondent often exhibited difficult behavior at the DEC hearings. As noted above, the complaints in Tribuzio and Ormsby referenced respondent's failure to reply to the investigator. He was not charged, however, with a violation of RPC 8.1(b) or RPC 8.4(d) and the complaint was not amended during the hearing to so charge respondent. While the language of the complaint put respondent peripherally on notice of a potential violation, the Board did not find respondent guilty of failure to cooperate, as contemplated by RPC 8.1(b) and RPC 8.4(d). This is not to say that the Board condoned respondent's conduct during the DEC hearing. Rather, the Board attributed respondent's behavior in part to lack of familiarity with DEC procedures and, in part as well, to youth and inexperience. Respondent was admitted to the bar in 1986. He opened his own practice in the spring of 1987, about the time the representations began in the Godesky and Tribuzio matters. His lack of experience could account for the poor records concerning communication with clients, the absence of billings to clients and, in particular, the failure to bring cases to fruition.

In mitigation, respondent advanced that he was involved in an accident in September 1991, during which he suffered neck and back injuries. He also stated that he suffers from gastrointestinal problems. Respondent added that he has been "at least partially physically disabled" and "that there has also been a mental component in that I have not been mentally functional to the extent that I had been before." There are, however, no medical records or other evidence to support respondent's claim of disability. Thus, the Board was unable to consider this alleged disability as a mitigating factor.

The Board unanimously determined to impose a reprimand for respondent's misconduct in Daniels, Godesky and Tribuzio. See In re Wildstein, 138 N.J. 48 (1994) (reprimand for failure to communicate in three matters, lack of diligence in two of the three matters and gross neglect in two of the three matters). In addition, respondent is to practice under the supervision of a proctor for one year.

Two members did not participate.

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

Dated: 4/8/97

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF RICHARD D. CARUSO

DOCKET NO. DRB 96-093

HEARING HELD: June 19, 1996

DECIDED: April 8, 1997

	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did Not Participate
HYMERLING			X				
COLE			X				
HUOT			X				
MAUDSLEY			X				
PETERSON			X				
SCHWARTZ			X				
THOMPSON							X
ZAZZALI							X

Robyn M. Hill 4/29/97
ROBYN M. HILL
CHIEF COUNSEL

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF RICHARD D. CARUSO

DOCKET NO. DRB 96-093

HEARING HELD: June 19, 1996

DECIDED: April 8, 1997

	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did Not Participate
HYMERLING			X				
COLE			X				
HUOT			X				
MAUDSLEY			X				
PETERSON			X				
SCHWARTZ			X				
THOMPSON							X
ZAZZALI							X

Robyn M. Hill 4/29/97
ROBYN M. HILL
CHIEF COUNSEL