

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-223

IN THE MATTER OF :
VINCENT J. CIECKA :
AN ATTORNEY AT LAW :

Decision

Argued: October 14, 1999

Decided: December 24, 1999

Jay J. Blumberg appeared on behalf of the District IV Ethics Committee.

Carl D. Poplar 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 IV Ethics Committee ("DEC"). Although the formal complaint charged respondent with violations of *RPC* 1.5(a) (excessive fee in a contingent fee matter), *RPC* 1.8 (prohibited

transaction with a client), *RPC* 1.8(e) (providing financial assistance to a client) and *RPC* 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), before the DEC hearing the presenter withdrew all charges, except that of a violation of *RPC* 1.8(e).

Respondent was admitted to the New Jersey bar in 1976. He received a private reprimand in 1993 when, after initially representing both the driver and passenger in an automobile accident, he withdrew from representation of the driver and sued the driver — his former client — on the passenger's behalf.

* * *

The presenter and respondent entered into a stipulation of facts. In addition, three witnesses testified: respondent and two of his employees.

In 1991 Lorraine Santare-Klagholtz retained respondent to represent her in a personal injury action as a result of an automobile accident. She had serious injuries including, among other things, multiple herniated discs that required three surgeries. Santare-Klagholtz was in dire circumstances. She incurred medical bills of \$124,422.82, was not able to work or drive, had no means of transportation, battled drug and alcohol addictions and endured child custody and other family disputes that resulted in various family court proceedings. At her request, respondent's office also represented her in family court matters, despite the firm's usual unwillingness to handle those types of cases. Santare-Klagholtz often appeared at

respondent's office when she did not have an appointment. On many of these occasions, she was despondent and appeared depressed and suicidal.

At times, Santare-Klagholtz was unable to pay the taxi drivers who brought her to respondent's office and was without the financial means to afford transportation to her doctors' offices. Various members of respondent's staff often gave her money so that she could keep her medical and other appointments. If, however, she requested more substantial sums of money, she was referred to Joseph Dennin, respondent's office manager, who would advance funds to her, in the form of cash payments, with respondent's approval. Respondent advanced a total of \$2,922 to Santare-Klagholtz, as follows:

- July 8, 1993 - \$300 for transportation to the office of a psychiatrist to whom Santare-Klagholtz had been referred by her neurosurgeon.
- December 7, 1993 - \$300 for transportation costs.
- January 25, 1995 - \$400 for transportation costs.
- May 25, 1995 - \$800 for a security deposit (Santare-Klagholtz was being evicted from her apartment), food and transportation costs.
- September/October 1995 - \$1,000 for living expenses. These funds were advanced after Santare-Klagholtz's personal injury lawsuit was settled, but before the settlement proceeds were distributed to respondent.
- Miscellaneous dates - \$122 (in small increments) from respondent's staff for transportation costs.

Although respondent contended that the funds were used by Santare-Klagholtz for transportation and living expenses, he was not able to provide any documentation that Santare-Klagholtz used the monies for those purposes.

On September 14, 1995 respondent settled Santare-Klagholtz's personal injury lawsuit for \$175,000, following an arbitration proceeding in Camden County. Although not required by any law, respondent requested judicial approval of the settlement. Respondent had tried, without success, to convince Santare-Klagholtz to accept a structured settlement, whereby she would receive the settlement proceeds in installments. Respondent was concerned that Santare-Klagholtz's receipt of a large amount of cash would result in some harm to her, either by her purchase of controlled dangerous substances or simply by her association with individuals involved with narcotics.

In September or October 1995, the settlement was reviewed by a Superior Court judge. Although respondent had hoped that the judge could persuade Santare-Klagholtz to accept a structured settlement, Santare-Klagholtz insisted on and received a lump sum payment. When the judge observed a notation on the settlement statement that respondent had advanced \$2,922 to Santare-Klagholtz, the judge notified the ethics authorities.

On September 9, 1996, less than one year after the settlement, Santare-Klagholtz passed away at the age of thirty-nine. The obituary appearing in the *Courier-Post* newspaper attributed her death to natural causes.

For his part, respondent testified that he had not arranged to pay the transportation expenses directly to a taxi service because giving the funds to Santare-Klagholtz appeared

to be the best way to take care of her transportation needs. Although at one point Santare-Klagholtz's personal injury protection carrier paid the transportation costs, as of January 25, 1995 the carrier refused to honor any further claims for such expenses.

According to respondent, Santare-Klagholtz was the only client to whom he had advanced funds. Indeed, Office of Attorney Ethics' investigator Alan Beck stated in a March 29, 1999 letter, that his review of a sampling of cases that respondent had settled over a seven-month period revealed no other instances of advancing funds to clients. Respondent testified that he had agreed to advance funds to Santare-Klagholtz because of her desperate circumstances:

She was truly exceptional in regards to the problems that she was having. And by that I'm talking major physical pain problems, major psychiatric problems associated with pain, as well as other psychiatric problems involving custody, involving family problems, just a whole myriad of problems. It was a unique – it was a catastrophic situation in my eyes that she was basically falling apart.

[T39]¹

In short, respondent contended that he had advanced the funds to Santare-Klagholtz as a humanitarian gesture, in the face of her extraordinary financial and other problems. He expressed his belief that, had he not provided Santare-Klagholtz with financial assistance, she might have committed suicide. According to respondent, it had never occurred to him that, if he had not advanced funds to Santare-Klagholtz, she might have retained another attorney.

¹ T refers to the March 12, 1999 DEC hearing.

* * *

The DEC found that, in advancing funds to Santare-Klagholtz, respondent violated *RPC* 1.8(e). The DEC further concluded that, respondent's advancement of \$1,000 to Santare-Klagholtz after the case was settled, but before settlement proceeds were disbursed, did not rise to the level of a violation.

The DEC recommended the imposition of a reprimand, notwithstanding the presenter's recommendation of an admonition.

* * *

Following a *de novo* review, we are satisfied by clear and convincing evidence that respondent violated *RPC* 1.8(e). There is no doubt that respondent advanced funds to a client. He represented Santare-Klagholtz in a personal injury action. Due to the severe physical and psychological injuries sustained in the automobile accident, Santare-Klagholtz was unable to work. She was unable to drive and had no means of transportation; she had domestic relations problems; and she also suffered from drug and alcohol abuse. In short, Santare-Klagholtz was in dire straits. Indeed, when respondent's office manager, Joseph Dennin, was asked at the DEC hearing if Santare-Klagholtz was "the most pitiful person you ever saw walk through the door?", he answered affirmatively.

Because Santare-Klagholtz sometimes appeared at respondent's office without an appointment and without any ability to obtain or pay for her own transportation, members of respondent's staff often paid for the taxi that had brought her to the office, as well as for taxi service to her medical appointments. When Santare-Klagholtz requested more substantial sums of money, the office manager, Dennin, with respondent's approval, advanced a total of \$2,922 to her with the understanding that she would reimburse the firm from her settlement proceeds.

RPC 1.8(e)(1) provides as follows:

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.

At the DEC hearing, respondent contended that his conduct was not unethical because the living expenses that he provided to Santare-Klagholtz constituted "expenses of litigation." Respondent relied on the *Report of the New Jersey Supreme Court Committee on the Model Rules of Professional Conduct*. This report, also known as the *Debevoise Report*, recommended that New Jersey adopt the *Model Rules of Professional Conduct* and provided commentary on each *RPC*. With respect to *RPC* 1.8(e), the report stated as follows:

Model Rule 1.8(e) permits a lawyer to provide certain kinds of financial assistance to a client. Although the Committee endorsed this rule, it notes that the term "litigation expenses" might in some circumstances be construed to include living expenses. In some situations, unless indigent clients are provided living expenses, litigation might not be possible. On the other hand, if lawyers are permitted to pay living expenses

for clients pending litigation of their cases, such payments might be misused by attorneys as inducements to gain employment. The Committee, concluding that these problems will have to be dealt with on a case-by-case basis, recommends adoption of 1.8(e).

Respondent maintained that, if he had not advanced funds to Santare-Klagholtz for living expenses, such as food, transportation and a security deposit for rent, she would not have been able to subsist on her own and the litigation would have terminated. Respondent further argued that, without financial assistance from him, Santare-Klagholtz might have been pressured to settle the litigation for much less than its value just to obtain money for living expenses. Moreover, respondent pointed to the *Debevoise Report's* urging that these matters be reviewed on a case-by-case basis to determine whether the client was induced to retain an attorney in order to obtain living expenses from that attorney. Respondent contended that the funds were advanced to Santare-Klagholtz without any obligation on her part to engage respondent as her attorney. Indeed, respondent testified that it had not occurred to him that, if he had refused to advance funds to Santare-Klagholtz, she might have hired another attorney. In addition, it was undisputed that this was an isolated incident and that respondent had not advanced funds to any other client.

We find that the rules do not permit the comments contained in the *Debevoise Report* to be incorporated in the *Rules of Professional Conduct*. If the rule allowed the interpretation advanced by respondent, we would be compelled to dismiss the ethics charge in this matter. Accordingly, we have referred to the Court the issue of amending the rules to incorporate the *Debevoise Report* comments.

Conduct similar to respondent's has resulted in the imposition of an admonition or a reprimand. In a matter heard in 1993, we issued a private reprimand (now an admonition) to an attorney who, in violation of *RPC 1.8(e)*, lent \$3,000 to a personal injury client who was severely injured in an accident and in dire need of funds for living expenses. We have also imposed reprimands in cases where attorneys have lent or advanced funds to more than one client through multiple loans and where other RPCs have also been violated. *See, e.g., In re Daniels*, 157 N.J. 71 (1999) (attorney advanced funds to two clients in anticipation of settlement of litigation, negligently misappropriated client funds and failed to maintain required records; attorney had prior private reprimand for failure to maintain records); *In re Rubin*, 153 N.J. 354 (1998) (attorney advanced funds to at least ten clients and failed to maintain quarterly reconciliations of his trust account; attorney had two prior private reprimands and a diverted matter); *In re Powell*, 142 N.J. 426 (1995) (attorney advanced funds to eight personal injury clients, failed to maintain required records and had a shortage in his trust account).

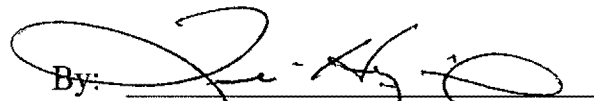
In this matter, a number of factors, primarily mitigating, have influenced our determination as to discipline. It is undisputed that respondent advanced funds to only one client. Moreover, respondent was motivated by an altruistic desire to assist a client on whom he and his staff had taken pity. He was moved by compassion to help a client, who, in a despondent state, turned to him for assistance. Ironically, this matter came to the attention of the ethics authorities because respondent, again seemingly motivated by altruism, voluntarily arranged for judicial review of the proposed settlement in an unsuccessful effort

to persuade his client to accept a structured settlement. Nevertheless, we also must consider respondent's 1993 private reprimand as an aggravating factor.

Following consideration of all of the above factors, we unanimously vote to impose an admonition for respondent's actions. Two members did not participate.

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

Dated: 12/24/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent J. Ciecka
Docket No. DRB 99-223

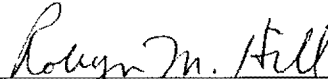
Argued: October 14, 1999

Decided: December 24, 1999

Disposition: Admonition

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			
Total:				7			2

* Member Thompson was on a temporary leave of absence


Robyn M. Hill
Chief Counsel