

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-032

IN THE MATTER OF :
VICTOR J. CAOLA :
AN ATTORNEY AT LAW :

Decision

Argued: April 16, 1998

Decided: December 8, 1998

Janet Zarski Kalopos 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 admitted to the New Jersey bar in 1980. At all times relevant to the within matter, respondent maintained a law office in Brick, Ocean County.

On May 4, 1990 respondent received a private reprimand for lack of diligence and failure to communicate with his client. In the Matter of Victor Caola, Docket No. DRB 90-097. On September 6, 1989 he received a public reprimand for misrepresenting his background and experience as a criminal defense attorney in a solicitation letter sent to a prospective client. In re Caola, 117 N.J. 108 (1989).

* * *

The complaint alleged violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) during respondent's representation of a client in a workers' compensation matter and in a personal injury action arising out of the same incident.

In April 1992 the grievant, Colleen Nicosia, was employed as a security guard for a department store. She was injured on the job while attempting to apprehend two shoplifters in a parking lot adjoining the store. The shoplifters struck her with their vehicle as they attempted to flee the scene. Nicosia retained respondent to represent her in a workers' compensation claim and a personal injury action against the shoplifters.

Respondent did not file the workers' compensation petition until March 30, 1994. Apparently, in June 1993 Nicosia had requested that respondent not file the petition, as evidenced by a letter from respondent, dated June 15, 1993, verifying that fact. The record

is not clear about what prompted Nicosia to later change her mind. However, from the filing of the claim onward the case appeared to proceed apace.

Nicosia testified that she was initially displeased with respondent's handling of her matter because he failed to notify her that he filed her claim in March 1994. According to Nicosia, she appeared twice for a court hearing in the workers' compensation case. She stated that respondent failed to appear each time. At the DEC hearing, however, Nicosia conceded that she had arrived late at the second court appearance and that she had been told by several people outside the courtroom that respondent had already argued her matter.

Nicosia also complained that, although she had called respondent at least ten times following the second court appearance, respondent never returned her calls.

For his own part, respondent admitted that he did not contact Nicosia either by letter or telephone immediately after the hearing. Respondent vaguely recalled two conversations with Nicosia about the case. Respondent had no explanation for the apparent failure to inform Nicosia that he had filed her workers' compensation claim in March 1994. Likewise, respondent could only attribute to an apparent oversight his office's failure to notify Nicosia that the first scheduled hearing had been adjourned. Respondent asserted, however, that from April 1995 onward the case moved along and was, in fact, settled in September 1995 for \$6,000.

With regard to the action against the shoplifters, apparently respondent filed a complaint on March 31, 1994. He made significant efforts to serve the defendants in that

matter, but was unsuccessful. Subsequent attempts to keep the case alive, including the filing of a detailed response to the court's motion to dismiss the complaint, were also unsuccessful. The case was finally dismissed without prejudice in July 1994, over respondent's objections.

Nicosia testified that she had no complaints about respondent's handling of that case. She was, however, unhappy about an unpaid medical bill in the amount of \$2,392 that she thought should have been paid in the workers' compensation case.

Respondent, in turn, claimed that he knew nothing about an outstanding medical bill and objected to the introduction of evidence about this charge without having been given any prior notice. Notwithstanding his objection, respondent explained that he had properly disclosed the terms of the settlement of the workers' compensation matter to Nicosia and that he had told her that any medical bills incurred after the settlement would be part and parcel of the action against the shoplifters.

At the DEC hearing, Nicosia acknowledged that she had filed a grievance against respondent in order to obtain payment for her medical bills. After hearing additional testimony from Nicosia on the issue, the panel chair made the following ruling:

The real issue is failure to keep client informed and communicate with them regarding representation in a third party action and worker's compensation case. To some extent these records could bear on a communication issue as well, but I just want to be clear they'll only be considered with regard to communication, not with regard to whether there was some failure to act appropriately with regard to how this [worker's compensation settlement] was handled, with regard to whether there's any responsibility for settling this without the medical bills being paid. Only to the extent that they bear on

communication between the grievant and the respondent but we're only going to consider them for those purposes.

As a direct result of that ruling, there is little else in the record about respondent's handling of the action against the shoplifters.

* * *

The DEC found that respondent violated RPC 1.4 by failing to keep Nicosia reasonably informed about the progress of the workers' compensation claim. The DEC dismissed the alleged violation of RPC 1.3, concluding that there was insufficient evidence that respondent violated that rule.

* * *

Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

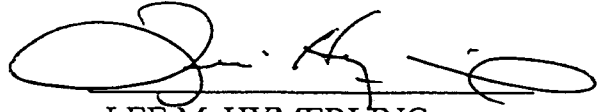
As to the charge of a violation of RPC 1.4(a), respondent admitted that he did not communicate with Nicosia following the workers' compensation hearing and did not apprise

her of either the filing of the petition or of the adjournment of the first scheduled hearing. Unquestionably, thus, respondent violated RPC 1.4(a). The DEC properly dismissed the charge of a violation of RPC 1.3. The proofs are insufficient to conclude that respondent failed to act diligently in the action against the shoplifters.

An admonition is generally the appropriate measure of discipline in matters involving an isolated failure to communicate with a client. See, e.g., In the Matter of Scott J. Marum, DRB 95-273 (October 5, 1995) [admonition imposed where, in a personal injury matter, the attorney failed to take steps to have his client appointed as guardian for her minor child and failed to comply with numerous requests for information from the client, in violation of RPC 1.3 and RPC 1.4(a)]; In the Matter of Robert S. Miller, DRB 95-307 (November 22, 1995) [admonition imposed where the attorney failed to file a motion for visitation rights in a domestic violence matter and failed to communicate the developments of the case to his client, in violation of RPC 1.3 and RPC 1.4(a)]. The Board unanimously decided, however, to impose a reprimand. The Board determined that, but for the prior ethics history, which also included failure to communicate with a client, an admonition would have been sufficient discipline. See In re Carmichael, 139 N.J. 390(1995)(reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two matters; the attorney had a prior private reprimand for similar misconduct.) One member did not participate.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 12/8/98



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Victor J. Caola
Docket No. DRB 98-032

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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz							x
Thompson			x				
Total:			8				1

By Robyn M. Hill 12/8/98
Robyn M. Hill
Chief Counsel