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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-223

IN THE MATTER OF :

JEFFREY P. CILLO :

AN ATTORNEY AT LAW :

Decision

Argued: July 17, 1997

Decided: June 29, 1998

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Theodore J. Romankow appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE"), based upon the decision of the United States District Court for the Southern District of New York to permanently bar respondent from appearing in that court. Respondent was not a member of that bar or of the New York bar. Rather, respondent had been admitted pro hac vice to the federal district court for one civil matter.

The district court's order of disbarment was based upon findings, agreed to by respondent, that he had violated the following disciplinary rules: D.R. 7-102(A) (false or

misleading statement and failure to disclose that which the lawyer is required to reveal); D.R. 1-102(A)(5) (conduct prejudicial to the administration of justice); D.R. 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and D.R. 7-110(B) (ex parte communication with a judge). The analogous Rules of Professional Conduct are: RPC 3.3(a)(1) and (2) (false statement of a material fact and failure to disclose a material fact to a tribunal; RPC 8.4(d) (conduct prejudicial to the administration of justice; RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 3.5(b) (ex parte communication with a judge).

Respondent has been a member of the New Jersey bar since 1981. In 1993, respondent received a private reprimand for failure to communicate with a client and to respond to the client's requests for information about her case. He also received a private reprimand in 1992 for entering into an improper business relationship with a client by borrowing money from the client without advising her of the desirability of seeking independent counsel and failing to obtain her written consent to the transaction.

The events leading to this matter took place in 1993 in a pending civil action ("New York action"). The New York action had been filed by Insurance Corporation of Hannover, Inc. ("ICH") against Latino Americana De Reaseguros, S.A. ("LARSA") and Citibank, N.A. ("Citibank"). ICH sought payments due under reinsurance contracts from LARSA, which was a Panamanian insurance company. ICH included Citibank as a defendant because Citibank held approximately $1.5 million in a trust for LARSA. The trust was established by LARSA for the beneficiaries of LARSA's United States policyholders in order to permit

LARSA to qualify as an alien insurer under New York law. At least $500,000 of the $1.5 million was owed to creditors of LARSA. Because Citibank had received conflicting demands for the trust money, it filed an interpleader claim in the New York action to be permitted to deposit the entire trust amount into court or for an order directing how the trust money should be distributed. The case was assigned to the Honorable Pierre Leval.

There was a second action filed by ICH against LARSA in California ("California action"). ICH also named Banco Cafetero ("Cafetero") as a defendant because Cafetero had issued a letter of credit in favor of ICH. The letter of credit had been obtained by LARSA to secure its obligations to ICH. The California action was settled during trial and a settlement agreement was signed on June 11, 1993. The settlement agreement provided that ICH would be paid $2.3 million and that the California and New York actions would be dismissed with prejudice. Cafetero was to pay $1.3 million and LARSA was to pay the remaining $1 million to ICH. However, Cafetero agreed to advance the $1 million owed by LARSA to ICH. LARSA's obligation to Cafetero was guaranteed by an indemnity collateralized by part of the Citibank trust money. Citibank was not a party to the California action and was not involved in the settlement.

A status conference in the New York action was scheduled for 11:30 A.M. on July 9, 1993. Respondent arrived at Judge Leval's courtroom one hour before the time the conference was scheduled to begin. Judge Leval's clerk called the matter early under the mistaken belief that all of the parties had arrived.

Respondent certified to Judge Leval that the case had been settled and that no one else was going to appear for the conference. Respondent presented Judge Leval with a proposed order that provided that the New York action was dismissed and that the trust money being held by Citibank was to be immediately returned to LARSA without reserve.

In fact, respondent knew that at least one other attorney involved in the litigation was going to appear for the conference. Furthermore, the terms of the order violated the trust agreement because the agreement required that Citibank maintain a reserve in the trust, the amount of which had not been finally determined, but which was at least $500,000. Finally, Citibank was not a party to the California settlement agreement and its interpleader claim in the New York action had not been settled.

Judge Leval made a handwritten addition to the order presented by respondent that the order was based upon the certification of respondent, counsel for LARSA, that the case had been settled. Respondent did not add that notation to the copy that was served upon Citibank.

The attorneys for the other parties arrived at Judge Leval's courtroom after respondent left the courtroom. When they learned what had occurred, they explained the true status of the matter to Judge Leval, who vacated the order. In the meantime, the order had already been served upon Citibank. However, Citibank had not released the trust money.

The OAE urged the Board to suspend respondent for six months.

* * *

Upon a de novo review of the full record, the Board determined to grant the OAE's Motion for Reciprocal Discipline. Pursuant to R. 1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), the Board adopted the findings of the United States District Court for the Southern District of New York.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), which directs that

> [t]he Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> > (A) The disciplinary or disability order of the foreign jurisdiction was not entered;
> >
> > (B) The disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
> >
> > (C) The disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
> >
> > (D) The procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> >
> > (E) The misconduct established warrants substantially different discipline.

The Board agrees with the OAE that the fifth exception applies here; namely, that the misconduct warrants substantially different discipline. R.1:20-14(a)(4)(E). In New Jersey, respondent's misconduct warrants a less severe sanction than permanent disbarment. More

properly, a term of suspension adequately addresses the nature of respondent's ethics transgression. However, the Board determined that respondent's misconduct was more serious than the conduct in In re Fink, 141 N.J. 231 (1994) and the other cases cited by the OAE.

Respondent's actions are more analogous to the misconduct committed by respondents in In re McNally, 81 N.J. 304 (1979) (attorney suspended for one year for false statements in a deposition in a civil matter) and In re Mocco, 75 N.J. 313 (1978) (one year suspension for misrepresentation to agencies). Furthermore, respondent has been disciplined on two prior occasions. Therefore, the Board unanimously determined to suspend respondent for one year.

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

Dated: 6/29/98

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey P. Cillo
Docket No. 97-223

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Disposition: One-Year Suspension

Members	Disbar	One-Year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		9					

Robyn M. Hill 7/17/98

Robyn M. Hill
Chief Counsel