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DISTRICT IX ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District IX Ethics Committee
Complainant,	:	
	:	Docket No. IX-00-015E
vs.	:	
	:	DISCIPLINARY ACTION
MILTON DIAMOND	:	
	:	COMPLAINT FOR MISCONDUCT
Respondent,	:	
	:	

District IX Ethics Committee by way of complaint against respondent,
says:

GENERAL ALLEGATIONS

1. Respondent, Milton Diamond, Esquire, was admitted to the Bar of this State in 1954.
2. Respondent maintains a law office at One Kettle Creek Road, Freehold, Monmouth County, New Jersey.

FIRST COUNT

1. In September 1996, Respondent was retained by Theresa Williams (hereinafter "Williams") to represent her in a legal malpractice action.
2. Thereafter, despite repeated efforts to reach Respondent by telephone, Williams was unsuccessful.
3. In June of 1999, Williams being unable to reach Respondent by telephone, ascertained that Respondent was at the Federal Courthouse in Trenton, and sought his advice as to the effect of a proposed settlement in a related case would have upon the legal malpractice case being handled by respondent.

4. Respondent failed to give advice or information as a result of that failure to advise, Williams entered into a settlement that was ultimately unfavorable to her.

5. Respondent's failure to communicate with Williams in response to her telephone calls and to explain the matter to Williams to the extent necessary for her to make informed decisions, constituted a violation of RPC 1.3 and 1.4.

SECOND COUNT

1. The allegations of the First Count are reiterated herein.

2. Williams paid a total of \$9,000.00 to Respondent.

3. No bill for services rendered was submitted by Respondent to Williams for 3.5 years.

4. When a bill was ultimately presented, it contained numerous entries for services which were not performed.

5. Respondent's failure to present timely billing and Respondent's billing for services not performed constitutes overreaching in violation of RJPC 1.5

THIRD COUNT

1. The allegations of the First and Second Counts are reiterated herein.

2. Williams filed an Attorney Fee Arbitration Request in October 1999.

3. In response, Respondent offered a letter of November 26, 1999 which contained attached "Statement of Professional Services."

4. Within the "Statement of Professional Services" were entries for which Respondent sought a legal fee, despite the fact that the entries pre-dated Respondent's retention as Williams' attorney or were

for services Respondent did not provide.

5. Respondent's conduct constitutes a violation of RPC 4.1 and 8.4.

FOURTH COUNT

1. The allegations of First, Second and Third Counts are reiterated herein.

2. Respondent testified at a Fee Arbitration which occurred on February 29, 2000.

3. Despite knowing that many of the legal services set forth as provided in the "Statement of Legal Services" had not been provided, Respondent testified that the services had been provided.

4. Respondent's conduct in testifying untruthfully constitutes a violation of RPC 4.1 and 8.4.

FIFTH COUNT

1. In May of 2000, Respondent was served with a copy of the Grievance which incorporated the Attorney Fee Arbitration Request filed by Williams, together with the written finding and decision of the District IX Fee Arbitration Committee.

2. Despite several follow-up letters requesting a response, no response was offered by Respondent himself.

3. Several letters were forwarded by Respondent's "legal assistant" which attempted to question the merits of the disciplinary investigation.

4. Respondent's failure to personally respond to the disciplinary investigation, and Respondent's failure to properly ensure that the conduct of his "legal assistant" was compatible with his professional obligations constituted a violation of RPC 8.1 and 5.3.

DISTRICT IX ETHICS COMMITTEE

Dated: November 8, 2000

By: /s/ Gary E. Linderoth

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Attorneys for Respondent

DISTRICT IX ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District IX Ethics Committee
Complainant,	:	
	:	Docket No. IX-00-015E
vs.	:	
	:	DISCIPLINARY ACTION
MILTON DIAMOND	:	
	:	VERIFIED ANSWER
Respondent,	:	
	:	

The respondent, Milton Diamond, by way of Answer to the Complaint says:

AS TO THE GENERAL ALLEGATIONS

1. Admitted.
2. Denied. Respondent is retired from the practice of law.

AS TO THE FIRST COUNT

1. Denied. Respondent agreed to represent all plaintiffs as a group, and not singly. The plaintiffs were Theresa Williams, Felix Pratico, Jr., Mark Pratico, Mary Morris and Francis Chester, Sr. It was understood that the underlying action could be successful only if all five plaintiffs sued jointly.
2. Denied. Respondent frequently communicated with Williams and the four other plaintiffs.
3. Denied. Respondent met Williams at the Mercer County Courthouse in Trenton on June 14, 1999, when respondent was in the company of other

clients.

4. Denied. Williams followed the advice of her attorney in the matter, Russell Kivler. It was not the function of respondent to interfere with the Williams/Kivler relationship or to tell Williams to disregard the advice of her lawyer.

5. Denied.

AS TO THE SECOND COUNT

1. The responses to the allegations of the First Count are repeated as if set forth herein.

2. Denied. The four other clients of respondent paid their equal shares of the \$9,000 that was in fact paid, and were satisfied with the services performed by respondent. The full \$10,000 retainer agreed upon was never paid by respondent's clients.

3. Admitted. Respondent's clients were aware that respondent was keeping track of all work performed on the subject case and those clients did not object to the lack of monthly billing.

4. Denied. There was only one minor oversight in the bill, related to attendance at the deposition.

5. Denied.

AS TO THE THIRD COUNT

1. Respondent repeats his answers to the allegations of the First and Second Counts as if set forth at length herein.

2. Admitted.

3. Admitted. Respondent submitted a full account of his relationship with Williams in a Statement of Professional Services, as well as a copy of his entire file made at his own expense. The Fee Arbitration Committee returned the entire file to respondent unopened.

4. Denied. Respondent had been contacted at least six months before August, 1996. He was advised that his services were to be retained in connection with a legal malpractice suit. Respondent agreed to accept the case, provided that documents were sent to him which proved sufficient to establish the cause of action. It was understood that respondent would commence billing for his review and analysis of these documents before he met with the clients. By the time of the August 14, 1996 meeting and retainer execution, Mr. Diamond had analyzed the entire case against the legal malpractice defendant, and was thereby able to discuss the matter intelligently and with full knowledge of the facts. It is unreasonable to believe that respondent would spend twelve hours of his time without seeking payment for that time, particularly when he had the agreement of the client to do so.

5. Denied.

AS TO THE FOURTH COUNT

1. Respondent repeats his answers to the First, Second and Third Counts of the Complaint as if set forth at length herein.

2. Admitted.

3. Denied. All the services, with the exception of a single error with respect to attendance at a deposition, billed mistakenly, were in fact provided by respondent.

4. Denied.

AS TO THE FIFTH COUNT

1. Respondent, repeating his answers to the First, Second, Third and Fourth Counts of the Complaint as if set forth at length herein, neither admits nor denies the allegations of Paragraph 1, as he does not have a recollection of this matter.

2. Denied. Respondent was ill and was unable to personally offer response at that time.

3. Admitted. At no time were the actions of respondent's legal assistant objected to by the Committee.

4. Denied. Respondent's inability to personally respond to the investigation, due to severe illness, does not constitute a "failure to respond" or a violation of RPC 8.1 and 5.3.

AFFIRMATIVE DEFENSES

1. While respondent fully denies any and all charges of unethical conduct, he nevertheless deems it his obligation and responsibility to reveal all conditions of physical and mental health which might be related to his defense.

A. Heart Disease. Respondent had his first heart attack in 1981 at 56 years of age. He had five-bypass surgery at Deborah Hospital in 1982. He suffered two more heart attacks in 1992 and was hospitalized at CentraState Hospital. In 1996, following heart failure, he was again hospitalized at CentraState and Paul Kimball Medical Center. He then underwent a second five-bypass surgery at Hahnemann Hospital. Respondent has subsequently experienced episodes of angina pain requiring repeated stays and treatment at various hospitals.

Respondent is 76 years old. His cardiologists have repeatedly warned him to avoid any and all events of a stressful nature. They have told him that his advanced age in conjunction with progressive heart disease, coronary attacks, depression, diabetes and prostate problems militate against any confrontation with stressors, His cardiologists have told him that aging entails the gradual loss of

the ability to deal with stress. Cardiologists for respondent who have treated him for more than 20 years have opined that respondent would be in danger of experiencing a stroke or death were he to confront stressful events.

B. Diabetes. The respondent, while undergoing testing at a VA Hospital in 1946, was advised that he had diabetes. Respondent has been told that stress can exacerbate the symptoms of diabetes and worsen metabolic control even in non-diabetics who are at genetic risk for diabetes.

C. Prostate Disease. Over the past five years, respondent has been treated for prostate disease at the University of Pennsylvania Medical Center. He underwent surgery on January 15, 2001 for full or partial removal of his prostate. The procedure was followed up shortly thereafter by a second surgery.

2. The combination of respondent's various medical conditions, together with the stress of a proceeding threatening to ruin his reputation, may limit the extent and/or manner of his participation in the defense of this matter.

DISCOVERY

Respondent demands that Complainant provide him with all discovery to which he is entitled pursuant to the rules.

DATED: February 21, 2001

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
Attorneys for Respondent

By: /s/ Frederick J. Dennehy

VERIFICATION

I have read the attached Verified Answer and I verify that to the best of my knowledge everything contained therein is true. I recognize that if anything I have said is wilfully false, I am subject to punishment.

DATE: February 21, 2001

/s/ Milton Diamond

SUPREME COURT OF NEW JERSEY

171 N.J. 56, 792 A.2d 396 (2002)

IN THE MATTER OF MILTON DIAMOND, AN ATTORNEY AT LAW

March 6, 2002

This matter having been presented to the Court on the motion filed by respondent MILTON DIAMOND of FREEHOLD, to adjourn the hearing before District IX Ethics Committee docketed as District Docket No. IX-00-015E, based on respondent's physical inability to participate in the proceedings or to assist in his defense, and good cause appearing;

It is ORDERED that MILTON DIAMOND of FREEHOLD, who was admitted to the bar of this State in 1954, is hereby transferred to disability inactive status pursuant to Rule 1:20-12(e), effective immediately, and until the further Order of the Court and it is further

ORDERED that the ethics proceedings currently pending before the District IX Ethics Committee are hereby stayed pending the further Order of the Court; and it is further

ORDERED that respondent be restrained and enjoined from practicing law during the period he is on disability inactive status and that respondent comply with Rule 1:20-20 governing attorneys transferred to disability inactive status.