

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1400 Disciplinary Docket No. 3
Petitioner :
 : No. 85 DB 2008
v. :
 : Attorney Registration No. 69872
MARC D. COLLAZZO, :
Respondent : (Chester County)

ORDER

PER CURIAM:

AND NOW, this 13th day of August, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 1, 2010, it is hereby

ORDERED that Marc D. Collazzo be subjected to public censure by the Supreme Court.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice McCaffery dissents.

A True Copy Patricia Nicola

As of: August 13, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1400 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 85 DB 2008
v.	:	
	:	Attorney Registration No. 69872
	:	
MARC D. COLLAZZO	:	
Respondent	:	(Chester County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On April 22, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Marc D. Collazzo. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that he made false statements to clients.

Respondent filed an Answer to Petition for Discipline on May 29, 2009 and admitted all allegations in the Petition.

A disciplinary hearing was held on August 27, 2009, before a District II Hearing Committee comprised of Chair Paul C. Troy, Esquire, and Members Stewart J. Greenleaf, Esquire, and Nicholas J. Caniglia, Esquire. Respondent was represented by Walter McHugh, Esquire.

The Hearing Committee filed a Report on December 31, 2009 and concluded that Respondent violated the Rules as charged in the Petition for Discipline. The Committee recommended that Respondent be publicly censured by the Supreme Court of Pennsylvania.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 14, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania

and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Marc D. Collazzo. He was born in 1968 and was admitted to practice law in the Commonwealth in 1994. His registered office address is Armstrong & Carosella PC, 882 Matlack St., Suite 101, West Chester PA 19382. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no history of professional discipline.

4. Respondent represented Philip and Libby Klear in connection with their claims arising from a May 23, 2003 automobile accident. Respondent knew the Klears through his friendship with two of the Klears' sons.

5. On October 21, 2004, Respondent filed a complaint on behalf of the Klears, captioned: Libby Klear and Philip Klear v. Jennifer L. Dalia and Domenic Dalia and Bernice Dalia, in the Superior Court of New Jersey.

6. The Dalias were insured by Atlantic Mutual Insurance Company.

7. At some point between May 2006 and July 24, 2006:

a. Respondent communicated an offer of settlement for \$15,000 to the Klears;

b. The Klears expressed dissatisfaction with the \$15,000 offer;

c. Respondent advised that they should accept the \$15,000 offer because Respondent had obtained for them another \$5,000; and

d. Respondent represented to the Klears that the additional \$5,000 was "in [Respondent's] hand."

8. Respondent's representation to the Klears that Respondent had obtained an additional \$5,000 settlement was false and Respondent knew it to be false when Respondent made it because at no time did Respondent ever obtain for the Klears an additional \$5,000.

9. The Klears agreed to accept the \$15,000 settlement based on Respondent's representation that Respondent had already received on their behalf an additional \$5,000.

10. By Order dated July 24, 2006, Klear v. Dalia was dismissed without prejudice because the action had been settled.

11. By letter dated August 15, 2006, Respondent provided the Klears with a release in connection with Klear v. Dalia in exchange for a \$15,000 settlement.

12. After receiving the August 15, 2006 correspondence:

a. Mr. Klear called and questioned Respondent as to why the release did not include the additional \$5,000; and

b. Respondent assured Mr. Klear that Respondent had the \$5,000 "in hand."

13. Respondent's representation to Mr. Klear that Respondent had obtained an additional \$5,000 settlement was false and Respondent knew it to be false

when Respondent made it because at no time did Respondent ever obtain for the Klears an additional \$5,000.

14. On August 29, 2006, the Klears signed a release of all claims against the Dalias and Atlantic Mutual Insurance Company in connection with the May 23, 2003 automobile accident in return for \$15,000.

15. By check dated September 29, 2006 in the amount of \$9,039.66, Respondent provided the Klears their share of the \$15,000 settlement.

16. On numerous occasions for approximately ten months prior to June 25, 2007, Respondent made knowing false representations to the Klears that their additional \$5,000 settlement was forthcoming.

17. On numerous occasions for approximately ten months prior to June 25, 2007, Respondent provided the Klears with several excuses he knew to be untrue as to why they had not received their \$5,000 settlement.

18. Prior to June 25, 2007, Respondent represented to the Klears that Respondent was pursuing an underinsured motorist claim on their behalf.

19. Respondent's representation to the Klears that Respondent was pursuing an underinsured motorist claim on their behalf was false and Respondent knew it to be false when Respondent made it, because Respondent never pursued an underinsured motorist claim on their behalf.

20. Respondent's representation to the Klears that he was pursuing an underinsured motorist claim on their behalf was false and he knew it to be false when he

made it, because in fact the Dalias had a one million dollar insurance policy and the settlement for \$15,000 effectively terminated any possibility to obtain an underinsured motorist claim against the Klears' automobile insurance carrier.

21. Respondent called Mr. Klear and knowingly misrepresented to him that an arbitration hearing for a purported underinsured motorist claim was scheduled for the next day and that it was unnecessary that he attend.

22. On the day of the purported arbitration hearing for the underinsured claim, Respondent called Mr. Klear several times and knowingly misrepresented that:

a. Respondent was in front of an arbitration panel and had been negotiating with opposing counsel;

b. Respondent had received an offer of \$10,000 but was holding out for \$15,000; and

c. Respondent had ultimately settled the underinsured claim for \$12,500.

23. On June 25, 2007:

a. Mr. Klear complained to Respondent's supervising attorney, Marc Steinberg, Esquire, about Respondent's representation of the Klears;

b. Mr. Steinberg questioned Respondent about Respondent's representation of the Klears;

- c. Respondent told Mr. Steinberg that there was no \$5,000 settlement but that Respondent was working on an underinsured claim on behalf of the Klears and was close to resolving that claim for \$12,500;
- d. Respondent called Mr. Klear in Mr. Steinberg's presence and advised him that the additional \$5,000 settlement did not exist but Respondent was close to resolving the underinsured claim for \$12,500;
- e. Following Respondent's telephone call to Mr. Klear, Respondent admitted to Mr. Steinberg that Respondent had not made any efforts to obtain either the \$5,000 or the additional \$12,500 and that Respondent had been lying to both Mr. and Mrs. Klear and Mr. Steinberg.

24. Respondent's representation to Mr. Steinberg that Respondent was working on an underinsured claim on behalf of the Klears was false and Respondent knew it to be false because Respondent never worked on such a claim.

25. Respondent admitted that he made misrepresentation to the Klears because he did not want to disappoint them if the settlement was not to their liking.

26. As a result of Respondent's misrepresentation to the Klears and Mr. Steinberg, Respondent's employment with Mr. Steinberg's law firm was terminated.

27. Respondent did not derive any financial benefit from his misrepresentations to the Klears.

28. Respondent is embarrassed and ashamed of his conduct and will be "tortured by it as I move forward."

29. Respondent apologized to the Klears and has sought to reestablish his friendship with them.

30. Respondent admitted to the allegations in the Petition for Discipline not only because they were true, but to save the Klears and Mr. Steinberg from having to testify at the hearing.

31. After the Petition for Discipline was filed against him, Respondent began treating with Jerrold Bonn, M.D., a psychiatrist, to address issues Respondent believes led to his misrepresentations to the Klears. As of August 27, 2009, Dr. Bonn had treated Respondent a total of nine times.

32. Respondent is currently employed as an associate at the law firm of Armstrong & Carosella PC in West Chester.

33. Respondent disclosed his disciplinary proceedings to his current employer prior to being hired.

34. Vincent Carosella, Esquire, is the managing partner at Armstrong & Carosella and testified at the hearing.

35. Mr. Carosella opined that Respondent enjoys a reputation in the legal community for being truthful and competent.

36. Jeffrey Nerenberg, Esquire, testified on behalf of Respondent. He has been an attorney in Pennsylvania since 1994 and has known Respondent for many years.

37. He described Respondent as having a reputation in the legal community as a truthful, hard-working and diligent attorney.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 4.1(a) – A lawyer shall not knowingly make a false statement of material fact or law to a third person.

2. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent that he made false statements to his clients and his supervising attorney. Respondent was charged with violations of RPC 4.1(a), which prohibits a lawyer from making a false statement of fact or law to a third person; RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

and RPC 8.4(d), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Respondent admitted all of the allegations against him and entered into a Joint Stipulation of Fact with Petitioner.

The record demonstrates that Respondent falsely represented to his clients, the Klears, that he had obtained a \$5,000 settlement above what had actually been offered, and that Respondent knew the representation was false when he made it because at no time did Respondent ever obtain for his clients an additional \$5,000. Respondent made knowing misrepresentations to the Klears for a period of ten months that an additional \$5,000 would be forthcoming. Most egregiously, Respondent pretended to the Klears that he was in front of an arbitration panel in an effort to obtain money through an underinsured motorist claim and actually conveyed to Mr. Klear that he had settled a claim for \$12,500.

This charade finally ended when Mr. Klear complained to Respondent's supervising attorney. Respondent initially admitted that there was no additional \$5,000 settlement, and then finally admitted that the underinsured motorist claim was a fiction as well. The record supports the conclusion that Respondent violated Rules of Professional Conduct 4.1(a), 8.4(c) and 8.4(d).

The Hearing Committee has recommended that Respondent be publicly censured by the Supreme Court. The parties did not object to this recommendation. A prior similar matter was resolved by a public censure. In Office of Disciplinary Counsel v. Krug, 66 DB 2006, 1272 Disciplinary Docket No. 3 (September 24, 2007), the respondent

made misrepresentations to his client in an attempt to conceal an earlier falsehood regarding a petition for equitable distribution. The Board noted that the case involved a single client and was resolved to the client's satisfaction.

Under the circumstances of this case, the Board is persuaded that public censure will sufficiently deter Respondent from engaging in future misconduct. While Respondent engaged in serious misrepresentations to his clients and his employer, his misconduct was isolated to one client matter, and it appears to have been brought about by his desire to please his clients, who were the parents of Respondent's friends. Respondent apologized to his clients and showed sincere remorse for his actions. He cooperated fully with Petitioner and took steps to understand why he engaged in the misrepresentations. As a direct result of his actions, Respondent's employment was terminated and he suffered financial difficulties at the time. Respondent is currently employed at a law firm in West Chester. The details of this disciplinary proceeding were revealed to the firm by Respondent prior to employment. While Respondent is anxious to move on from this episode in his professional life, the record is clear that he will not forget the impact of his actions, nor will he be likely to repeat them in the future. The Board recommends that Respondent receive a public censure.

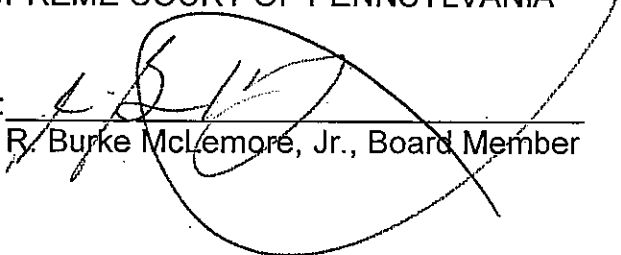
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Marc D. Collazzo be subjected to a Public Censure.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
R. Burke McLemore, Jr., Board Member

Date: June 1, 2010

Board Members Buchholz, Cohen and Lawrence recused in this matter.