WILLIAM MACKIN
SHERMAN SILVERSTEIN KOHL ROSE & PODOLSKY, PA
308 HARPER DRIVE, SUITE 200
MOORESTOWN, NJ 08057
(856) 662-0700
PRESENTER

DISTRICT IV ETHICS COMMITTEE, Complainant	:	SUPREME COURT OF NEW JERSEY District IV Ethics Committee
	:	Docket No. IV-2014-053
v.	:	
ALBERT A. CIARDI, III Respondent	:	Disciplinary Action COMPLAINT

District IV Ethics Committee by way of complaint against Respondent, says:

BACKGROUND

1. Albert A. Ciardi, III ("Respondent") was admitted to the Bar of this State in 1991 .

2. Respondent maintains a law office in Haddonfield, Camden County, New Jersey.

3. On November 10, 2006 Respondent's law firm sent an engagement letter for the provision of chapter 11 bankruptcy legal services to L&T Development, LLC ("L&T") and M&T Marine Group, LLC ("M&T").

4. L&T was the principal member of M&T.

5. Both LLCs are New Jersey limited liability companies.

6. The engagement letter was addressed to the attention of Thomas Tomei ("Grievant").

7. The engagement letter was signed by Grievant as a member of one or both of the LLCs.

8. Grievant was at all relevant times a resident of New Jersey.

9. Grievant signed the engagement letter in New Jersey.

10. On January 4, 2007 Respondent filed M&T's chapter 11 petition in the United States Bankruptcy Court for the District of New Jersey (Camden Vicinage) under docket number 07-

10163 GMB.

11. On March 8, 2007 M&T's chapter 11 case was converted to a chapter 7 proceeding.

12. Respondent did not file a fee application in the Bankruptcy Court seeking approval of the amount of fees claimed to be due.

13. Instead, after M&T's case was converted to chapter 7, Respondent sent a series of invoices to M&T (to Grievant's attention) requesting payment of fees alleged to be due.

14. On October 9, 2007 Respondent filed a lawsuit against Grievant in the Court of Common Pleas of Philadelphia County under docket number 07-1001539.

15. Respondent did not send Grievant a pre-action notice of the opportunity for fee arbitration required under R.1:20A-6.

16. The complaint does not allege that Respondent sent Grievant a pre-action notice of the opportunity for fee arbitration required under R.1:20A-6.

17. Respondent's failure to provide Grievant with the notice under R. 1:20A-6 before filing the lawsuit required Grievant to respond in the Pennsylvania Courts against a lawsuit that should not have been filed (and which should have been dismissed for failure to allege that Respondent sent Grievant the required pre-action notice), or risk having judgment entered against him by default.

18. On February 4, 2008, approximately 4 months after filing the complaint, Respondent belatedly sent a notice of the availability of fee arbitration to Grievant under R. 1:20A-6.

19. Grievant submitted a request for fee arbitration dated March 5, 2008.

20. On March 31, 2008, a Fee Arbitration proceeding was docketed at Grievant's request, against Respondent.

21. The filing of a fee arbitration request form with the committee secretary constitutes a stay

of all pending court actions for the collection of the fee. See R. 1:20A-3(a)(1).

22. On March 31, 2008, the District IV Fee Arbitration Committee Secretary sent a letter to Respondent serving Grievant's Fee Arbitration request. That letter states "If a lawsuit is pending regarding this fee, you must request that the suit be stayed pending resolution of the matter by the Fee Arbitration Committee."

23. On or about April 14, 2008 Respondent filed an Attorney Fee Response Form with the Fee Arbitration Committee requesting fees of $69,980.97.

24. Despite knowing that the Fee arbitration request had been docketed and despite actually having filed an Attorney Fee Response Form with the Fee Arbitration Committee, Respondent did not stay the Pennsylvania proceedings but instead actively continued to pursue collection of M&T's legal fees from Grievant outside the fee arbitration process.

25. Respondent filed an amended complaint on July 8, 2008.

26. The amended complaint does not mention the fee arbitration process at all. It does not allege that Respondent sent Grievant the notice of the opportunity for fee arbitration under R.1:20A-6. It does not state that Grievant actually requested fee arbitration. It does not state that a fee arbitration hearing was then pending. It does not state that Respondent had engaged in the fee arbitration process by submitting an attorney response form. It does not advise the Court of Common Pleas that the pending matter should be stayed.

27. Respondent thereafter compelled Grievant to be deposed.

28. On March 17, 2009, almost 1 full year after having been directed to stay the Pennsylvania case, Respondent filed a motion for summary judgment against Grievant in the Pennsylvania case based on the claim of unjust enrichment. That motion was granted on May 6, 2009 resulting in a judgment against Grievant in the amount of $84,377.92.

29. On November 16, 2009 Respondent subsequently took further action outside of the fee arbitration process by having the Pennsylvania judgment domesticated in New Jersey.

30. On March 16, 2010 the Fee Arbitration hearing was finally held.

31. On May 3, 2010 the Fee Arbitration Determination was issued concluding that Respondent could not recover any of the unpaid fees from Grievant.

32. On May 6, 2010 the District IV Fee Arbitration Committee Secretary sent a letter to Grievant and Respondent with a copy of the Fee Arbitration Determination Form.

33. On October 18, 2012, more than 2 years after the Fee Arbitration Committee had issued the Fee Arbitration Determination, and despite knowing that Grievant could not be held responsible for the fees, Respondent took direct action to seek to collect the fees from Grievant by obtaining a writ of execution against Grievant on the docketed New Jersey judgment in the amount of $97,136.61. 34. The writ of execution, once obtained, was served on Grievant.

FIRST COUNT
(Knowingly Disobeying Obligations of Court's Mandatory Fee Arbitration Rules Rule 1:20A-1, *et seq.* and RPC 3.4(c))

35. The allegations of paragraphs 1 through 34 are incorporated herein by reference.

36. RPC 3.4(c) states that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

37. There is clear and convincing evidence that Respondent knowingly violated R. 1:20A-6 by initially failing to send the pre-action notice before filing the Pennsylvania lawsuit.

38. There is clear and convincing evidence that Respondent knowingly violated R. 1:20A-6 by failing to allege compliance with R. 1:20A-6 in the initial complaint.

39. There is clear and convincing evidence that Respondent knowingly violated R. 1:20A-6 by failing to allege compliance with R. 1:20A-6 in the amended complaint.

40. There is clear and convincing evidence that Respondent knowingly violated R. 1:20A-3(a)(1) by continuing collection actions against Grievant outside of the mandatory fee arbitration process after Respondent was aware that Grievant had initiated the fee arbitration process.

41. Respondent's failure to initially comply with R. 1:20A-6 before starting down the road of litigation, his failure to stay the Pennsylvania case after knowing that fee arbitration had commenced, his subsequent pursuit of summary judgment against Grievant in the Pennsylvania case, and his domestication of that judgment in New Jersey all required Grievant to incur substantial time and expense defending against such actions, attending depositions, seeking reconsiderations and filing appeals.

42. Respondent's actions substantially multiplied Grievant's time and costs in defending against Respondent's relentless collection activities and denied Grievant the "swift, fair and inexpensive" method to resolve fee disputes for which the fee arbitration rules exist.

43. Thus, there is clear and convincing evidence that Respondent violated RPC 3.4(c) by knowingly disobeying obligations under the mandatary fee arbitration rules of the Court.

SECOND COUNT
(RPC 3.3(a)(5) - Candor Towards the Tribunal)

44. The allegations of paragraphs 1through 43 are incorporated herein by reference.

45. RPC 3.3(a)(5) prohibits a lawyer from failing to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal.

46. Despite having sent Grievant a notice of the availability of fee arbitration, despite the docketing of Grievant's request for fee arbitration, despite the Fee Arbitration Secretary's letter to Respondent advising that fee arbitration had been initiated and that all collection proceedings must be stayed, and despite Respondent having filed the Attorney Fee Arbitration Response

Form, the amended complaint does not mention the fee arbitration process at all.

47. It does not allege that Respondent sent Grievant the notice of the opportunity for fee arbitration under R.1:20A-6.

48. It does not state that Grievant actually requested fee arbitration.

49. It does not state that a fee arbitration hearing was then actually pending.

50. It does not disclose that R. 1:20A-3(a)(1), now implicated by the initiation of fee arbitration, required the Pennsylvania action to be stayed.

51. Respondent was aware, from the Fee Arbitration Secretary's letter and by the provisions of R. 1:20A-3(a)(1) itself, that such a result would likely occur if the Pennsylvania Court was aware of the pending fee arbitration.

52. Respondent's decision to omit these material facts from the amended complaint was therefore reasonably certain to mislead the Pennsylvania Court as to the propriety of continuing with the action then pending before it.

53. Thus, there is clear and convincing evidence that Respondent violated RPC 3.3(a)(5) by completely omitting any mention of the pending fee arbitration process in the amended complaint despite having knowledge of such facts and a clear duty to do so under Rule 1:20A-6.

THIRD COUNT
(RPC 8.4 (d) - Conduct that is prejudicial to the administration of justice)

54. The allegations of paragraphs 1through 53 are incorporated herein by reference.

55. RPC 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice

56. Respondent's actions resulted in the entry of judgments in two separate jurisdictions against Grievant on a claim for which Grievant had absolutely no responsibility.

57. There is clear and convincing evidence that Respondent's actions violated RPC 8.4(d) by

engaging in conduct prejudicial to the administration of justice.

FOURTH COUNT
(RPC 8.4 (c) - Conduct involving dishonesty, fraud, deceit or misrepresentation)

58. The allegations of paragraphs 1through 57 are incorporated herein by reference.

59. RPC 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

60. On October 18, 2012, more than 2 years after the Fee Arbitration Committee had issued the Fee Arbitration Determination, and despite knowing that Grievant could not be held responsible for the fees, Respondent took direct action to seek to collect the fees from Grievant by obtaining a writ of execution against Grievant on the docketed New Jersey judgment in the amount of $97,136.61.

61. The act of applying for and obtaining a writ of execution on the New Jersey judgment carried with it implicit assertions by Respondent to the Court that Grievant was liable to pay the debt embodied in the judgment and that Respondent was entitled to collect that debt by process against Grievant's assets.

62. Both assertions were, at that time, completely false.

63. Both assertions were, at that time, known by Respondent to be completely false.

64. Thus there is clear and convincing evidence that Respondent violated RPC 8.4(c).

WHEREFORE, Respondent should be disciplined.

DISTRICT IV ETHICS COMMITTEE

By: _____
Investigator, Chair or Secretary

Dated: March 3, 2016

CARL D. POPLAR, P.A
1010 Kings Highway South
Bldg. One
Cherry Hill, NJ 08034
856-216-9979
Attorneys for Respondent

SUPREME COURT OF NEW JERSEY
District IV Ethics Committee
Docket No. IV-2014-053

DISTRICT IV ETHICS COMMITTEE,	:	
Complainant,	:	
v.	:	**Disciplinary Action**
ALBERT A. CIARDI, III , ESQUIRE,	:	**VERIFIED ANSWER**
Respondent.	:	

Respondent, Albert A. Ciardi, III, Esquire, by way of Verified Answer to the Complaint of the District IV Ethics Committee, says as follows:

GENERAL ALLEGATIONS

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted that the engagement letter was addressed to the attention of Thomas Tomei.

7. Admitted that the engagement letter was signed by Thomas Tomei as a member of one or both of the LLCs.

8. Admitted that Thomas Tomei at all relevant times was a resident of New Jersey.

9. It is admitted that Thomas Tomei signed the engagement letter, however, it was in Philadelphia, PA.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted that the Respondent submitted invoices to Thomas Tomei, and the invoices speak for themselves.

14. Admitted.

15. It is admitted that the Respondent did not send or include a pre-action notice in the law suit Complaint referred to in Paragraph 14, however a pre-action notice was sent to M&T Marina to the attention of Thomas Tomei on February 4, 2008.

16. It is admitted that the Respondent did not provide Thomas Tomei and Vincent Tomei a pre-action notice in the law suit Complaint filed in Pennsylvania, however, the Respondent's clients were L&T Development LLC and M&T Marine Group LLC.

17. As to the averments herein, The Respondent neither admits nor denies but leaves the Complainant to its proof. The averments set forth opinions of what may potentially occur and accordingly are inappropriate and not relevant in these proceedings.

18. Admitted that on or about February 4, 2008, the Respondent sent a notice of the right to a Fee Arbitration to Thomas Tomei.

19. It is admitted that Thomas Tomei submitted request for Fee Arbitration on March 5, 2008.

20. Admitted.

21. R.1:20A-3(a)(1) speaks for itself. It is admitted that the Fee Arbitration form acts as a stay for pending actions for fees. The Secretary of the Fee Arbitration Committee is obligated to notify the appropriate Clerk of the Court when pending proceedings are stayed pursuant to the Rules.

22. The letter of March 31, 2008, speaks for itself.

23. Admitted.

24. Admitted that the subject fees were sought from Thomas Tomei and did not cause a stay of the Pennsylvania litigation. The Respondent neither admits nor denies the remaining averments of this Paragraph and leaves the Complainant to its proof.

25. Admitted.

26. The Amended Complaint speaks for itself.

27. Admitted that the Respondent, by Order of the Court, deposed Thomas Tomei.

28. Admitted, however, the motion was against Thomas Tomei.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted. Tomei was misnamed the Grievant.

34. Respondent neither admits nor denies the allegation of this Paragraph but leaves the Complainant to its proof.

FIRST COUNT

35. Respondent's answers to Paragraph 1-34 are hereby incorporated by reference as if same are set forth at length herein.

36. Admitted, however, RPC 3.4(c) speaks for itself.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Respondent neither admits nor denies the allegations of this Paragraph but leaves the Complainant to its proof. The averments included herein are not relevant in a disciplinary proceeding.

42. Respondent neither admits nor denies the allegations of this Paragraph but leaves the Complainant to its proof. The averments included herein are not relevant in a disciplinary proceeding.

43. Denied.

SECOND COUNT

44. Respondent's answers to paragraph 1-43 are hereby incorporated by reference as if same are set forth at length herein.

45. RPC 3.3(a)(5) speaks for itself.

46. It is admitted that the Amended Complaint does not reference fee arbitration.

47. The Amended Complaint speaks for itself.

48. The Amended Complaint speaks for itself.

49. The Amended Complaint speaks for itself.

50. The Amended Complaint speaks for itself.

51. Denied.

52. Denied.

53. Denied.

THIRD COUNT

54. Respondent's answers to paragraph 1-53 are hereby incorporated by reference as if same are set forth at length herein.

55. RPC 8.4(d) speaks for itself.

56. It is admitted that there were entries of judgments in two separate jurisdictions. The Respondent neither admits nor denies the other included averments but leaves the Complainant to its proof.

57. Denied.

FOURTH COUNT

58. Respondent's answers to paragraph 1-57 are hereby incorporated by reference as if same are set forth at length herein.

59. RPC 8.4(c) speaks for itself.

60. Admitted except the action was against Thomas Tomei.

61. The Respondent neither admits nor denies the allegations of this paragraph but leaves the Complainant to its proof.

62. Denied.

63. Denied.

64. Denied.

WHEREFORE, Complainant's Complaint should be dismissed as no cause for discipline has been proven by clear and convincing evidence against Respondent.

SEPARATE DEFENSES

1. The assertions of facts in the Complaint do not constitute violations of:

   a. RPC 3.4(c)
   b. RPC 3.3(a)(5)
   c. RPC 8.4(c)

2. The Supreme Court of New Jersey District IV Ethics Committee does not have jurisdiction over the assertions in the Complaint.

3. The asserted time and expense of Thomas Tomei is not relevant in disciplinary proceedings.

4. There are no facts to support the required state of culpability for a violation of an RPC.

5. The asserted failure of compliance with R.1:20A-6 does not constitute or support a violation of the RPCs.

6. Thomas Tomei was not the client of the Respondent.

7. The Respondent reserves the right to raise other defenses.

8. The assertions that litigation conduct by an attorney that is presented or done for any improper purpose that includes but is not limited to harassment or causing unnecessary delay or needlessly increases the cast of litigation or is otherwise frivolous conduct is not the appropriate subject of a disciplinary proceeding.

Note

The grievant referenced in the Complaint refers to Thomas Tomei. The grievant herein is Daniel McCormack, Secretary – District IV Fee Arbitration Committee by issuing a letter of January 3, 2013, to the OAE.

CARL D. POPLAR, P.A.
A Professional Corporation

By: _____
Carl Poplar, Esquire
Attorney for Respondent

Dated: April 26, 2016

VERIFICATION

I, Albert A. Ciardi, III, Esquire, am the Respondent in the within disciplinary action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

2. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Respondent:

_____
Albert A. Ciardi, III

Dated: April 23, 2016