

## **DISCIPLINARY ACTION**

**Private Admonition With Conditions - Board Case No. 37, 2003. Date of Sanction: November 19, 2003.** A panel of the Preliminary Review Committee ("PRC") offered the sanction of a private admonition to a lawyer in Board Case No. 37, 2003, for certain violations of the Delaware Lawyers' Rules of Professional Conduct (the "Rules"). The lawyer consented to the imposition of the private admonition.

This disciplinary matter arose in connection with the lawyer's representation of clients who were the plaintiffs in a medical malpractice case. A dispute arose between the lawyer and the clients regarding the advancement of costs for the services of a medical expert for deposition. Ultimately, the defense filed a motion for summary judgment based upon the failure of the plaintiffs to produce a medical expert for deposition prior to the discovery cutoff, or even after a status hearing was held before the court and a new cutoff date was set. The lawyer failed to inform the clients about the filing of the motion for summary judgment; the hearing on that motion; and the court's order granting the motion. Almost two months after the court's order, the plaintiffs wrote directly to the court about their concerns regarding the representation and inquiring as to the status of the case. The court wrote and informed the plaintiffs about the entry of the summary judgment against them.

At all times pertinent to the lawyer's conduct, **Rule 1.4(a)** stated that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information," and **Rule 1.4(b)** stated that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The lawyer violated Rule 1.4(a) by failing to keep the clients reasonably informed about the status of their case in court, including by failing to inform them about (a) a motion for summary judgment filed by the defense; (b) a hearing before the court on the motion; and (c) the court's order granting the motion for summary judgment against the clients. The lawyer violated Rule 1.4(b) by failing to explain legal matters to the clients,

including matters relating to (a) the filing of the motion for summary judgment and the legal options for achieving their objectives in the face of such motion, and (b) the granting of the summary judgment motion by the court, and the legal options for further motions in that court and/or an appeal.

In assessing whether the sanction of a private admonition with conditions should be offered to the lawyer in this matter, the PRC considered that judgment was entered against the clients in their medical malpractice case, without their prior knowledge of the motion for summary judgment or the hearing on that motion, and that the lawyer failed to inform them that the judgment had been entered against them so that they could determine whether they wished to pursue post-judgment motions and/or an appeal. The PRC also considered the applicable aggravating and mitigating factors. In aggravation: the lawyer's substantial experience in the practice of law. In mitigation: (1) the absence of any prior disciplinary record; (2) the absence of a dishonest or selfish motive; (3) the lawyer's remorse and recognition of the wrongfulness of the misconduct; and (4) the lawyer's full cooperation with the ODC in its investigation of this disciplinary matter.

The PRC offer that was accepted by the lawyer included the following conditions:

(1) Consultation with a member of the Professional Guidance Committee of the Delaware State Bar Association ("PGC"), addressing topics including law office management and client relations issues pertaining to litigation practice. In particular, but without limitation, the lawyer should consult with the PGC member regarding the effective and appropriate use of written correspondence to communicate with clients, and regarding effective strategies for dealing with client relations problems which may arise in the course of a representation. The lawyer must provide a written report to the ODC confirming compliance with this condition and summarizing the issues addressed at the PGC meeting.

(2) The lawyer shall reimburse the ODC for the costs of its investigation, pursuant to Procedural Rule 27.

