

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-280
District Docket No. XIV-03-510E

IN THE MATTER OF
JEFF GOLDSMITH
AN ATTORNEY AT LAW

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Decision

Argued: November 16, 2006

Decided: December 19, 2006

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a recommendation for discipline (censure) filed by the District IIA Ethics Committee ("DEC"). The complaint alleged that respondent grossly neglected an estate matter. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1984. On March 15, 1994, respondent received a private reprimand for gross neglect, lack of diligence, and failure to communicate with a client. On October 7, 2002, he received an admonition

for: (a) practicing law for a seven-month period, in 1999 and 2000, while ineligible to do so for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection; and (b) failing to comply with a diversionary agreement entered pursuant to R. 1:20-3(i)(2)(B)(i).

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.15(b) (failure to promptly deliver funds to a client or third party), and RPC 3.4(c) (knowingly disobeying a court order).

In his answer to the ethics complaint, and again at the DEC hearing, respondent admitted his misconduct in this matter. As a result, the DEC hearing, which was brief, was largely limited to mitigation.

On November 20, 1991, respondent's friend, Drew Foster, executed his last will and testament and named respondent the executor of the estate. Foster died on March 27, 2000. On April 13, 2000, the will was admitted to probate and respondent was appointed executor.

The estate was not complex, consisting primarily of Foster's house and nine investment accounts. Notwithstanding the uncomplicated nature of the assets, during the first nineteen months of his administration of the estate respondent made no

distributions to beneficiaries, although funds were available for that purpose. In fact, the investment accounts contained almost \$500,000, which was ready for disbursement to beneficiaries.

The other asset, the house, was sold on September 25, 2000, for \$237,000. At closing, respondent received a \$21,599.12 check from the buyers, representing the proceeds of sale due the estate. Respondent never negotiated that check, nor obtained an inheritance tax waiver for the transaction, which was required before the release of an additional \$70,000 escrowed by the buyers' attorney. As a result, \$91,000 of estate funds lay dormant, neither distributed to beneficiaries nor earning interest for the estate.

Respondent also ignored his obligation to file certain estate documents: a) Foster's state and federal income tax returns for 1999 and 2000; b) the estate's 2000 New Jersey inheritance tax return; c) estate tax returns for 1999 and 2000; and d) requests for extensions of time to file tax returns for Foster and the estate for 1999 and 2000.

Respondent admitted that he ignored the beneficiaries' numerous requests for information about the status of the case, including letters, facsimiles, telephone calls and office

visits, all seeking his cooperation in moving the estate forward.

As a result of respondent's inaction, Foster's brother, a beneficiary, was compelled to file an action seeking respondent's removal as executor. Respondent was properly served with the complaint, but failed to file an answer. Therefore, a default judgment was entered against him. In the interim, an order was entered on May 17, 2002, requiring an accounting, the turnover of estate records to a new executor, and the return of executor commissions. Respondent admitted that he did not heed the court order, but pointed out that he had not taken an executor's commission and had turned over some incomplete records in August 2002.

On June 3, 2003, the court entered a final judgment against respondent in the amount of \$401,645.02. As of the date of the hearing, respondent had not paid the judgment, citing financial reasons.

The DEC raised another issue in its proceedings, dealing with respondent's recordkeeping practices. The OAE had conducted an audit of respondent's trust and business accounts for 2000 through 2003. The OAE investigator, Christopher Spedding, concluded that respondent had not maintained proper receipts and disbursements journals, and had commingled personal and trust

funds. Spedding's findings are contained in a January 14, 2004 investigative report. For unknown reasons, the complaint did not charge respondent with recordkeeping violations. Therefore, respondent did not address the recordkeeping issue in his answer.

Spedding testified briefly at the DEC hearing that the audit had revealed no misappropriation of trust account funds, but had exposed recordkeeping violations. Respondent was questioned about some aspects of the estate matter, but was not asked to address the recordkeeping allegations. As a result, the record before us does not contain respondent's position on the recordkeeping violations at issue.

Respondent offered several mitigating factors for his misconduct (listed in his answer under the heading "Affirmative Defenses"), namely, personal and family tragedies that beset him during the time in question. Specifically, respondent suffered from a debilitating back condition in 1993, and underwent surgery in 1994. That same year, his mother suffered a heart attack. In 1995, respondent's sister was diagnosed with ovarian cancer. She died in 1997. Meanwhile, according to respondent, he and his longtime law partner had an "acrimonious" parting.

As a result of these stressful events, in 1995 respondent sought help from a clinical psychologist, Eliezer Mayer, Psy.D.

According to respondent, Mayer found that he suffered from depression. Respondent has been treating with Mayer at least weekly ever since.

Nineteen months after Foster's death, respondent lost two friends in the 2001 World Trade Center attack, deepening his depression and rendering him unable to attend to his law practice. Mayer suggested that he limit his law practice to less stressful matters. Therefore, respondent voluntarily limited his practice to real estate, municipal, and non-litigated commercial matters.

Finally, respondent stated that he had retained a part-time assistant to help him with organizational, secretarial, and bookkeeping functions.

The DEC found respondent guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 3.4(c). However, the panel also found that respondent violated "the RPCs concerning attorney business and trust accounts" (presumably R. 1:21-6 and RPC 1.15(d)), noting that the complaint had not charged respondent with recordkeeping violations. Specifically, the DEC found that respondent had not maintained proper receipts and disbursements journals, had commingled personal and escrow funds, had not performed required reconciliations of his trust account, and had not kept deposit slips for the trust account.

The DEC recommended a censure, with the further conditions of a one-year proctorship and proof of fitness to practice law.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent's conduct violated the charged RPCs. He ignored a sizeable, uncomplicated estate. Although he was acting as executor, as opposed to the attorney for Foster's estate, he still had a fiduciary relationship with the beneficiaries, and an obligation to conduct himself in accordance with the rules. In re Genser, 15 N.J. 600 (1954).

Here, estate assets sat unattended for almost two years. During that time, respondent made no distributions to beneficiaries, despite almost \$500,000 in available funds for disbursement.

Likewise, respondent did not deposit the closing proceeds from the house, over \$21,000, into the estate account, and failed to draft and file with the taxing authorities an inheritance tax waiver form, thereby leaving \$70,000 escrowed by the buyers' attorney in limbo. This \$91,000 of estate funds lay wasting for almost two years because of respondent's inaction.

Respondent also failed to file two years of federal and state income tax returns (or requests for extensions) for Foster

and the estate. In effect, respondent took little action as administrator, evidencing a lack of diligence in his duties to the estate. Chronologically, to this point, it could be said that respondent simply lacked diligence, and perhaps engaged in simple neglect. But his sloth went beyond ignoring the estate and its beneficiaries. He ignored the beneficiaries' complaint seeking his removal as executor, and a court order requiring an accounting and the return of estate records. Ultimately, a \$400,000 judgment failed to get his attention. We, therefore, have no difficulty finding that respondent's inaction also amounted to gross neglect, a violation of RPC 1.1(a). Further, respondent's refusal to act on the court order violated RPC 3.4 (c).

Respondent also failed to promptly disburse \$591,000 of estate funds that were available for beneficiaries, a violation of RPC 1.15(b).

Additionally, respondent concededly ignored numerous attempts by the beneficiaries to obtain information about the case, in the form of letters, facsimiles, telephone calls, and office visits, a violation of RPC 1.4(a). He did so for the two years that he held the position of executor.

On the other hand, we dismiss the charges related to "the RPCs concerning attorney business and trust accounts." The

complaint did not charge respondent with recordkeeping violations. Although the OAE investigator alleged that recordkeeping deficiencies existed in respondent's office at the time of the audit, ethics authorities never sought respondent's statement on the issue in the complaint or at the DEC hearing. Respondent may have had explanations for some, if not all, the alleged deficiencies. Therefore, because the issue was not fully litigated below, we dismiss the recordkeeping charges.

In summary, we find respondent guilty of gross neglect, lack of diligence, failure to communicate with beneficiaries, and failure to promptly deliver funds to a third party in a single matter, while acting in the fiduciary capacity of executor of Foster's estate.

An attorney acting not in his role as attorney, but solely as the executor of an estate, is still subject to the Rules of Professional Conduct. See, e.g., In re Hansen, DRB 96-270 (September 25, 1996) (admonition for attorney who, while acting as executor of an estate, failed to communicate with a beneficiary of that estate). Other attorneys acting outside their attorney roles, but as a trustee for an estate, have also been held liable in the attorney disciplinary system for their actions. "An attorney serving as a trustee is held to the same high standards as an attorney who is representing a client." In

re Dreier, DRB 93-404 (March 21, 1994) (slip op. at 13). In fact, "[c]onduct by an attorney which engenders disrespect for the law calls for disciplinary action even in the total absence of an attorney/client relationship." In re Carlsen, 17 N.J. 338 (1955) (citing In re Howell, 10 N.J. 139 (1952)). Accordingly, attorneys must conform their conduct to the high standards of the profession, even if their activities are not related to the practice of law. In re Genser, 15 N.J. 600, 606 (1954). Accord In re Alsobrook, DRB 05-237 (December 21, 2005) (slip op. at 22 n.7).

Ordinarily, failure to comply with court orders will yield an admonition or reprimand. See, e.g., In the Matter of Santo J. Bonanno, DRB 97-238 (September 30, 1997) (admonition for attorney who failed to comply with a court order and failed to act diligently in another client matter) and In re Kersey, 170 N.J. 407 (2002) (reprimand on motion for reciprocal discipline for attorney who failed to comply with court orders on three occasions in his own divorce matter).

So, too, conduct involving gross neglect in one or a few matters, with or without misconduct such as lack of diligence and failure to communicate with the client, warrants the imposition of an admonition or a reprimand. See, e.g., In the Matter of E. Steven Lustig, DRB 00-003 (April 10, 2000)

(admonition for gross neglect in a matrimonial matter and failure to adequately communicate with the client); In re Wildstein, 138 N.J. 48 (1994) (reprimand for gross neglect and lack of diligence in two matters and failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand for gross neglect and failure to communicate in two matters).

In aggravation, respondent's history of final discipline includes a 1994 private reprimand for gross neglect, lack of diligence, and failure to communicate with a client in one matter and a 2002 admonition for practicing while on the CPF list of ineligible attorneys. In mitigation, respondent offered some anecdotal evidence of a battle with depression, the result of a series of difficult personal problems over the years.

The DEC did not support its recommendation of a censure with case law. At the DEC hearing, the presenter recommended discipline "somewhere between a reprimand and a censure." Thereafter, in an October 30, 2006 letter-brief to us, the presenter called for a censure, on the basis that the 1994 private reprimand for similar misconduct requires "escalating discipline."

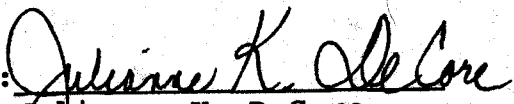
We believe that the now twelve-year old private reprimand is too remote in time to warrant the imposition of progressive discipline. In addition, the presenter factored recordkeeping

violations into its recommendation for a censure, a finding that we have dismissed. We believe that respondent's conduct does not require discipline more severe than a reprimand. We, therefore, determine to reprimand him.

Chair O'Shaughnessy and Members Lolla, Stanton, and Neuwirth voted to impose a censure, based on the aggravating factor that the beneficiaries were denied access to a substantial liquid estate over an extended period of time.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William O'Shaughnessy, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

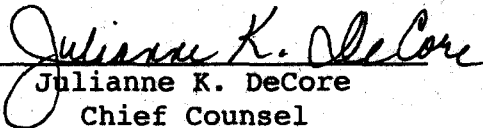
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Disposition: Reprimand

Members	Disbar	Suspension	Censure	Reprimand	Admonition	Did not participate
O'Shaughnessy			X			
Pashman				X		
Baugh				X		
Boylan				X		
Frost				X		
Lolla			X			
Neuwirth			X			
Stanton			X			
Wissinger				X		
Total:			4	5		


Julianne K. DeCore
Chief Counsel