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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-113

IN THE MATTER OF
GEORGE J. MANDLE
AN ATTORNEY AT LAW

Decision

Argued: May 14, 1998

Decided: September 28, 1998

Barbara S. Worth appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District XII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1970 and is engaged in the practice of law in Linden, Union County.

In 1996 respondent received a reprimand for gross neglect, lack of diligence and failure to cooperate with the ethics authorities in four separate matters. In re Mandle, 146 N.J. 520 (1996). Respondent was also required to practice under the supervision of a proctor for a period of two years.

The complaint charged violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); RPC 3.2 (failure to expedite litigation) and RPC 8.1(b) (failure to cooperate with the ethics authorities). At the DEC hearing, respondent admitted the facts recited in the complaint.

On or about October 6, 1995 respondent met with his longtime client, John Byko, Jr., to revise Byko's will. Byko apparently wished to name respondent as executor and trustee. Respondent made those revisions to the will. Byko died unexpectedly nine days later. Respondent was then retained to represent Byko's estate. Respondent was to receive a \$500 retainer and \$100 per hour under the fee agreement.

One of the beneficiaries, James J. Brown, the grievant in this matter, testified that over the course of the next year he made "dozens" of telephone calls to respondent in an effort to obtain information about the case. Respondent did not return those telephone calls. In fact, respondent admitted that he would contact Brown only when he had his own reasons to do so.

After Brown threatened to file an ethics grievance against respondent, the two met at respondent's office on October 26, 1996. Brown testified that at that meeting respondent was unable to produce any documentation showing that he had worked on the estate.

In January 1997 respondent made a partial distribution of estate assets, totaling \$24,000. At that time he took an executor's commission of four percent (\$960). Respondent had not yet conducted an accounting or filed tax returns for the estate. Indeed, respondent ultimately failed to file both federal and state tax returns for the estate.

In addition, respondent neglected to sign an estate check sent to Alexander M. Watson, in the amount of \$4,000, representing Watson's share of the estate. Watson testified that respondent had sent a replacement check, which Watson had lost. Watson noted that he wrote three letters and made at least six telephone calls to respondent in an effort to have the second check replaced. According to Watson, respondent never complied with his requests. In fact, respondent admitted his failure to respond to Watson's inquiries and to replace the missing check.

With regard to the allegation of a violation of RPC 8.1(b), respondent admitted at the DEC hearing that on or about February 10, 1996 he received the DEC's initial correspondence containing the grievance and did not reply to it until March 19, 1997. Respondent admitted receiving a subpoena from the DEC seeking his file in late April 1997 and a formal complaint dated June 16, 1997. Respondent did not file his answer until August 8, 1997 and did not turn over his file to the DEC until September 19, 1997. Respondent

conceded his failure to cooperate with the ethics authorities, claiming that he was frightened by the process. Ultimately, respondent cooperated fully with the DEC and the new attorney retained by the beneficiaries to complete the administration of the estate. There is no evidence of harm to the estate or the beneficiaries as a result of respondent's inaction.

Finally, respondent admitted failing to comply with the requirement that he practice under the supervision of a proctor, as mandated by the Supreme Court in his earlier 1996 ethics matter. Respondent claimed that he had initially attempted to secure a proctor, but became embarrassed to ask for that type of help from his colleagues in the profession. Respondent testified at the DEC hearing that he had found a proctor and that the "system was in place."

* * *

The DEC found violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b). The DEC dismissed the charge of a violation of RPC 3.2, reasoning that litigation was not involved in the matter. The DEC recommended the imposition of a sixty-day suspension and restitution to the estate in the amount of \$500, representing the full amount of respondent's retainer.

* * *

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

Respondent admitted violations of RPC 1.3, RPC 1.4(a) and RPC 8.1(b). Respondent stopped short of admitting that his conduct constituted gross neglect, leaving that determination to the DEC, which then found a violation of that RPC. Indeed, respondent never performed a formal accounting of the estate and never filed federal or state tax returns. Respondent's only work in the estate seems to have centered around the partial distribution of assets, for which he took a commission as executor, and the payment of a few minor bills. In addition, the beneficiaries were forced to retain another attorney to complete the administration of the estate. Hence, the Board found that respondent's failure to properly represent the estate constituted gross neglect, in violation of RPC 1.1(a), and lack of diligence, in violation of RPC 1.3.

With regard to the alleged violation of RPC 1.4(a), respondent admitted that he did not respond to Brown's reasonable requests for information about the estate. Furthermore, respondent conceded that he only contacted the beneficiaries when he needed to for his own purposes. Clearly, respondent's conduct violated RPC 1.4(a). Although respondent did not technically represent the beneficiaries, he had a duty to comply with their reasonable requests

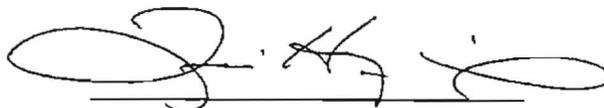
for information, even in the absence of an attorney-client relationship. In re Genser, 15 N.J. 600 (1954).

As to the alleged violation of RPC 8.1(b), respondent admitted that he did not cooperate initially with the ethics authorities. He claimed that he was scared to deal with the disciplinary authorities. Ultimately, respondent cooperated with the DEC and the new attorney for the estate. He filed an answer and appeared at the DEC hearing. Accordingly, the Board determined to dismiss that charge.

An admonition is generally appropriate for misconduct of this sort, where only one matter is involved. See, e.g., In the Matter of Aslaksen, DRB 95-391(1995)(admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in one matter. In a medical expert malpractice case, the attorney failed to serve answers to interrogatories, retain medical expert or advise client of ultimate dismissal, despite client's requests for information.); and In the Matter of Onorevole, DRB 94-294(1994)(admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in an insurance matter.) However, given respondent's prior brush with the ethics authorities for similar misconduct, the Board unanimously determined to impose a reprimand. The Board also required respondent to return the \$500 retainer to the estate and to practice under the supervision of a proctor for one year, consecutive to the proctorship already in force. One member did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 9/28/98



LEE M. HYMERLING
Chair
Disciplinary Review Board