

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-025
District Docket No. XB-2008-0011E

IN THE MATTER OF :
:
JEFFREY GROW :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: April 15, 2010

Decided: June 16, 2010

Eric S. Solotoff appeared on behalf of the District XB 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 us on a recommendation for discipline (censure) filed by the District XB Ethics Committee ("DEC"). The two-count complaint alleged gross neglect (RPC 1.1(a)), and failure to turn over the client's file to

subsequent counsel, upon termination of the representation (RPC 1.16(d)). We determine to dismiss the complaint.

Respondent was admitted to the New Jersey bar in 1975. He has no prior discipline.

In early 2007, respondent prepared a will for Arthur Hoffman, whom he had known his entire life. Hoffman, who never married, left his entire estate to his four sisters - Evelyn Whitley (the grievant), Helen Mantooth (the executrix), Betty Hanson, and Dorothy Boaz. Under the terms of the will, which is not in the record, the sisters were to receive equal one-fourth shares of Hoffman's estate.

On February 21, 2007, respondent traveled to Hoffman's home, in Rockaway, for the will signing. Respondent recalled that day in his reply to the ethics grievance. According to respondent, Hoffman, suffering from cancer,

was frail and sickly but able to come from his bedroom to his kitchen to sign the will. Present were two witnesses who were neighbors of Mr. Hoffman. We discussed Mr. Hoffman's love of fishing. Mr. Hoffman mused that there would be trouble for his sister Helen Mantooth who was to become the executrix of his estate. The very next day I received a call from Ms. Mantooth that her

brother had died that day, February 22, 2007.

[HPRTab3 at 1.]¹

Mantooth, as executrix, retained respondent to probate the will. On March 6, 2007, Mantooth, respondent, Hanson, Boaz, and Boaz' husband traveled to Morris County to have the will probated. It became apparent to respondent, on the automobile ride to the courthouse, that the sisters did not get along with each other. They accused each other of manipulating Hoffman during his lifetime, each for her own financial benefit. For example, one sister claimed that Hanson had convinced Hoffman to take out a life insurance policy naming her as beneficiary. Another sister asserted that Mantooth was the named beneficiary of three annuities that Hoffman had signed over to her.

About a month later, on April 3, 2007, respondent presided over the sale of Hoffman's house for \$425,178.12. Of that amount, \$67,485 was held by the buyer's attorney, pending receipt of an inheritance tax waiver from the taxing

¹ "HPRTab3" refers to the third tab attached to the December 16, 2009 hearing panel report, which includes respondent's detailed July 14, 2008 reply to the ethics grievance.

authorities. The remainder was placed in an estate account opened by Mantooth at Sovereign Bank's Rockaway branch.

On April 7, 2007, respondent received a letter from Hanson's attorney, proposing that, in an effort to equalize the sisters' shares of the estate, Hanson would be willing to turn over her insurance proceeds to the estate, if Mantooth were to do the same with the annuities. It is not clear from the record if that was ever accomplished.

On May 18, 2007, respondent sent the inheritance tax return to the taxing authorities, along with the taxes due (\$69,142.78). On November 11, 2007, respondent received a tax waiver for the transaction and sent the buyer's attorney a request for the \$67,485, held since the April closing. Respondent did not receive those funds until February 2008.

Also in February 2008, Sovereign Bank informed respondent that Hoffman had another account at the bank, with a balance of \$20,479.26. Respondent prepared an amended tax return and to pay the additional \$2,253 in estate taxes.

Respondent's difficulties began when he received an April 28, 2008 letter from Juan Ryan, Esq. According to the letter, Ryan had been retained by the estate to recover from respondent the net proceeds of the sale of Hoffman's house. Ryan asserted

that respondent had ignored Mantooth's requests for an accounting and for the distribution of the sale proceeds. Ryan also accused respondent of "inexcusable delay" and demanded an accounting of the estate "by the end of next week." Otherwise, he would file suit and report respondent to ethics authorities.

Respondent replied to Ryan on April 30, 2008, explaining the reasons why he had not yet disbursed the proceeds of sale, including the late discovery of a second Sovereign Bank account and the belated receipt of the buyer's escrow. Respondent advised Ryan that he was "not yet in receipt of the total money of the estate" and that he anticipated receiving a tax waiver "any day now".

On May 1, 2008, Ryan requested copies of respondent's "correspondence with the Inheritance Tax Bureau and the monthly statements" from the estate account. On June 30 and July 8, 2008, Ryan sent additional requests for that information.

Meanwhile, on June 9, 2008, one of the sisters, Whitley, sent respondent a letter requesting documentation of all actions on behalf of the estate. The letter also cautioned respondent that she had a "claim of professional neglect" against him for withholding information about the status of disbursements of estate funds. Whitley specifically requested a list of all

disbursements, a separate list of disbursements to Mantooth, a copy of the will, and the final petition.

On June 30, 2008, Whitley filed an ethics grievance against respondent, alleging that he had failed to comply with numerous written requests from the sisters for information about the status of their brother's estate. The record before us contains no evidence of any correspondence from the sisters to respondent, including Mantooth. Respondent was not charged with having failed to communicate with anyone. None of the sisters testified at the DEC hearing.

On July 15, 2008, Ryan sent respondent yet another letter, this one containing numerous questions about "errors" appearing in respondent's proposed final accounting sent to Mantooth (exactly when is not clear from the record). By letter dated September 23, 2008, respondent provided Ryan with a revised final accounting and requested a general release from Mantooth.

Thereafter, on November 24, 2008, Ryan wrote to respondent about two checks, one from the Lincoln Life and Annuity Company (\$5,010.55) and the other from the New Jersey Teachers Pension and Annuity Fund (\$2,321), neither of which appeared on the inheritance tax return. Ryan asked if the checks had been

deposited to the estate account, as he could not tell from respondent's accounting.

Finally, on December 18, 2008, Ryan wrote to the DEC investigator, with a copy to respondent, complaining that respondent had not replied to Ryan's request for information about the two checks.

Ryan testified briefly at the DEC hearing about his involvement on behalf of the estate. He stated that Mantooth had retained him to "find out what was going on with the estate, and as it turned out to see what corrections had to be made to the inheritance tax return." Ryan discovered that respondent had over-reported the estate's income by \$100,000, having failed to utilize a \$25,000 deduction for each of the sisters, and had overpaid estate taxes by about \$9,000.

In addition, Ryan took issue with the manner in which respondent set up the estate accounting. Instead of keeping the assets, liabilities, and expenses of administration separately, as Ryan was accustomed to doing, respondent had "lumped everything together," which made it difficult for Ryan to figure out how respondent had handled the estate. Ryan also testified that respondent never gave him copies of the checks and bank

statements that he had requested and that he had been compelled to obtain that information from Sovereign Bank.²

At the ethics hearing, respondent clarified that, although he initially denied having received Whitley's June 9, 2008 letter, when he and the ethics investigator reviewed the contents of his file, they discovered her letter at the bottom of the file. He had no recollection of ever having seen the letter, prior to its discovery in his file that day.

Respondent also recalled Ryan's April 28, 2008 letter, signaling his involvement in the case. That letter prompted respondent's calls to Mantooth, but he was unable to reach her to verify the termination of his representation. He replied to Ryan a few days later, because he learned that Mantooth, who lived in Florida, "debited the entire estate account," closing the Sovereign Bank account and moving the funds to Florida. Respondent claimed that, thereafter, he no longer trusted her. He denied having actively avoided Ryan. Rather, he explained, he "just didn't want anything to do with what was going on with the executor."

² Ryan was not asked why he had not obtained them from Mantooth.

Respondent had also wondered why Ryan and Mantooth's sisters had not contacted Mantooth directly for information about the estate, as he had "sent to the executor, as I recall at the time, all the checks, all the entire estate account and so I assume that information was available and I don't understand why later on they are asking me for this same stuff or asking questions of me." He concluded that, because Mantooth and Whitley would not speak to each other, Whitley had sought information directly from him, instead of her sister.³

Respondent conceded that he had not sent Ryan or Whitley documents or records, but stated that he had already sent Mantooth copies of everything relevant to the estate. He insisted that, although he had not corresponded with Ryan, they had been in contact during the summer. He also recalled that Ryan had never requested a copy of the estate file, which had led him to believe that Ryan was more of a "second opinion" attorney, than the attorney for the estate at that time.

³ In addition to filing the grievance, Whitley wrote a letter to the Morris County Prosecutor on June 9, 2008. She alleged that respondent and Mantooth were involved in a scheme to defraud her and the other sisters out of the estate proceeds.

It was not until Mantooth sent respondent a letter, in the summer of 2008, terminating his representation that he was certain that his role as estate attorney had ended. Neither the letter nor its date are a part of the record.

Respondent also recalled sending Mantooth his draft of the final accounting for the estate, in July 2008. Mantooth then sent the draft to Ryan, who reviewed it and sent respondent the July 21, 2008 letter requesting changes.

Respondent maintained that he had cooperated with Ryan, even after his representation had ended and into the fall of 2008, tailoring the formal accounting to Ryan's liking in his September 2008 draft.

With regard to RPC 1.16(d), respondent acknowledged only that he did not reply to Ryan's final two letters. The first, dated November 24, 2008, requested information about two checks totaling over \$7,300 that should have been deposited into the estate account, but about which Ryan could not decipher respondent's accounting. Respondent conceded that he did not reply to that letter and should have done so. He explained, however, that he knew nothing about those two checks and presumed that Mantooth had received them directly and not advised him of it. He reminded the hearing panel that Mantooth

had closed the Sovereign Bank account and that the bank had refused to give him further information about the account. Hence the reason for not having replied to Ryan.

The second letter, dated December 12, 2008, was addressed to the DEC investigator, not respondent, and alerted the DEC to respondent's failure to reply to Ryan's November 24, 2008 letter. Respondent acknowledged receiving a copy of that letter and acknowledged that he "was probably wrong" for not doing anything about it. When pressed further for his reasoning, respondent stated:

[w]hen that money disappeared [from the Sovereign Bank account], I contacted Mr. Ryan and I said what the hell happened? And he said, I guess the executor took the money. I wrote a letter and I also called Mr. Nelson, the attorney for Betty Hanson in New Jersey here, and advised him that the estate account was no longer here in New Jersey but was in Florida and, yes, I didn't want anything to do with it after that. I'm sorry, that's the way I felt and, you know, that's what I - from that point on did not cooperate, I told you that.

[T48-25 to T49-11.]⁴

⁴ "T" refers to the transcript of the September 16, 2009 DEC hearing.

With regard to RPC 1.1(a), the charge that he botched the estate calculations, respondent flatly denied having been guilty of gross neglect. He admitted that he had initially failed to take the \$100,000 exemption, but added that he had rectified that oversight and had obtained a refund of the overpayment, before Ryan had even become involved in the case.

Respondent also contested Ryan's characterization of his practices as mistake-laden, including that he had misstated, in his accounting, the amount of estate funds attributable to the real estate sale. Respondent explained that he had shown that transaction properly, as two deposits. The first was the \$10,000 downpayment, which had come into the estate about ten days before the remaining \$415,000 obtained at closing. Respondent asserted that, had Ryan simply added the two deposits together, he would have arrived at the correct \$425,000 figure for the entire transaction. No expert testimony or other evidence was presented to refute respondent's claim that his actions were proper.

Finally, respondent asked the DEC to consider an additional factor that had influenced his handling of the estate. Ryan was at least the third attorney to contact him on behalf of one or more of Hoffman's sisters. Those attorneys had "disappeared,"

after their initial inquiries. Respondent thought for a while that Ryan, too, might vanish after an initial inquiry.

The DEC found that respondent failed to cooperate with Ryan, after his July 2008 termination from the representation. In particular, the DEC found that respondent failed to reply to Ryan's requests for documents and information, which ultimately led to the additional cost of Ryan's services. The DEC concluded that respondent had violated RPC 1.16(d).

Additionally, the DEC found that respondent made "numerous mistakes" in calculating the estate and then stuck his "head in the sand," when avoiding Ryan, conduct that amounted to gross neglect. The DEC also found a pattern of neglect, although RPC 1.1(b) was not charged in the complaint.

The DEC recommended a censure and a proctor for one year. No explanation was given for the inclusion of a proctor.

Upon a de novo review of the record, we are unable to agree with the DEC that the record clearly and convincingly establishes that respondent acted unethically.

Respondent became embroiled in a bitter family dispute involving Hoffman's four sisters over his estate. He did not, however, grossly neglect the case, as evidenced by all that he accomplished during his tenure as attorney for the estate.

Within two months of Hoffman's death, respondent presided over the sale of Hoffman's house. Thereafter, he probated the will, prepared and filed numerous documents for tax purposes, and generally marshaled the assets of the estate.

A little over a year into the representation, in April 2008, respondent received a letter, apparently out of the blue, from attorney Ryan, indicating that he had been retained to represent the estate. Respondent immediately replied to that letter, even though he was unable to confirm that Mantooth had authorized Ryan's retention. Respondent explained to Ryan that the buyer's attorney had been slow to release the escrow and that respondent was close to disbursing the estate funds.

Ryan then sent respondent several more letters, between May and July 2008. Although respondent did not reply to them, he cooperated with Ryan during that time, noting that he had completed and had sent Mantooth his proposed final accounting that month.

Meanwhile, at some point during the summer, Mantooth sent respondent a letter discharging him from the representation. Respondent soldiered on into September 2008, agreeing to redraft his final accounting to Ryan's preferences.

We are not convinced that respondent's actions constituted gross neglect. He was clearly helping Ryan with matters of the estate, even after his termination. The DEC incorrectly concluded that respondent bungled the case and exhibited gross neglect. To the contrary, however, respondent actively tried to assist the estate, even after having been discharged. For these reasons, we dismiss the RPC 1.1(a) charge.

The DEC also found a "pattern of neglect," although RPC 1.1(b) was not charged in the complaint and the record contains no evidence of that found violation. We, therefore, reverse that finding.

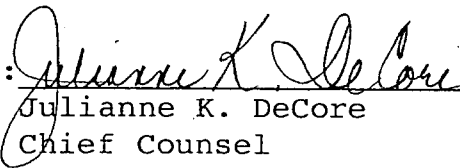
We also conclude that respondent did not violate RPC 1.16(d). That rule states, in relevant part, that, "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client [and] allowing time for employment of other counsel." Respondent took considerable steps to protect the estate by his actions through September 2008. When, in November 2008, Ryan presented him with yet another demand for information on checks about which respondent knew nothing, respondent ignored the correspondence. While it would have been more prudent for respondent to call or

to write Ryan that he knew nothing and could not access bank information about the checks, Ryan could have obtained that information directly from his client or from the bank. Likewise, we do not fault respondent for not replying to Ryan's December 2008 letter to the DEC investigator complaining about respondent, as that correspondence was not directed to him.

In sum, we find no clear and convincing evidence that respondent's actions failed to protect the estate in any way. Thus, we determine to dismiss all charges.

Member Wissinger did not participate.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

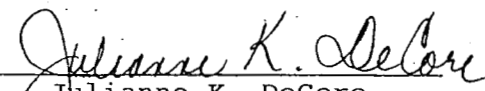
In the Matter of Jeffrey R. Grow
Docket No. DRB 10-025

Argued: April 15, 2010

Decided: June 16, 2010

Disposition: Dismiss

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman				X		
Frost				X		
Baugh				X		
Clark				X		
Doremus				X		
Stanton				X		
Wissinger						X
Yamner				X		
Zmirich				X		
Total:				8		1


Julianne K. DeCore
Chief Counsel