SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-418

IN THE MATTER OF	:
EDWARD A. REILLY, III	:
AN ATTORNEY AT LAW	:

Decision
of the
Disciplinary Review Board

Argued: April 19, 1995

Decided: August 11, 1995

John C. Carton appeared on behalf of the District IX Ethics Committee.

Stanley S. Spector appeared on behalf of respondent.

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 an admonition filed by the District IX Ethics Committee ("DEC"), which the Board elected to bring on for hearing, pursuant to R. 1:20-15(f)(4). The formal complaint charged respondent with violations of RPC 1.3 (lack of diligence) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1978. He was privately reprimanded in 1990 for failure to cooperate with the ethics committee.

In or about January or March 1992, respondent was retained by Joseph Casale to assist him in the early withdrawal of the entire proceeds of an annuity fund, which had been established for him

through-Plumbers and Pipefitters Local Union 9. Casale wished to withdraw his annuity benefits because he had been convicted of a crime for which he expected to be sentenced to at least five years' imprisonment, leaving his two young children (then one-year old and a newborn) without any means of support. Linda Valente ("grievant") was the mother of those children.

Grievant and respondent offered somewhat divergent accounts of respondent's efforts and involvement in this matter.

According to grievant, Casale first contacted and met with respondent in January 1992. Grievant was not present during that meeting. Thereafter, in March 1992, grievant telephoned respondent to discuss his fee. She was interested in learning the projected total of respondent's fee because she anticipated that the responsibility for payment of that fee would ultimately fall upon her. That was so because grievant viewed respondent's efforts to benefit her and because Casale, given his anticipated incarceration, would be financially unable to pay the fee. The record does not disclose whether grievant ever advised respondent that she intended to assume responsibility for the payment of his fee. That notwithstanding, respondent assured her that the fee would be relatively low.

Grievant and respondent did not discuss the progress of the case during that conversation. They did discuss the status of the matter on at least one occasion thereafter, when grievant again telephoned respondent, this time to inquire as to the progress of

respondent's efforts. He responded "positively." T21.[1]

Thereafter, grievant testified, between December 1992 and late February 1993, respondent consistently failed to return her telephone calls, failed to appear at their scheduled meetings and failed to vigorously pursue the withdrawal of the annuity funds. Grievant perceived that respondent represented her in this matter and, after a heated telephone conversation with him in February 1993, grievant advised respondent that she "no longer needed his services." T40.

At some point thereafter, grievant learned from a Mr. Schaffer, the manager/administrator of the annuity fund, that respondent had previously submitted to him an application for the withdrawal of the funds, which purportedly bore her signature. Grievant maintained that she had never signed that application and, further, that she had never authorized respondent or anyone else to do so in her behalf. Nevertheless, grievant admitted that she would have been willing to execute that or any other document respondent needed in order to facilitate the release of the annuity funds to her.

Ultimately, the annuity funds ($44,000) were released to grievant in June 1993. It is not clear, however, whether those funds were released as a result of respondent's efforts or of grievant's own subsequent efforts.

Finally, grievant alleged that respondent failed to return to

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[1] "T" denotes the DEC hearing transcript of September 30, 1994.

her $160, which she had brought to him to defray the costs of filing a motion for the issuance of a Qualified Domestic Relations Order ("QUADRO") to hasten the release of the funds. Admittedly, respondent never filed the motion.

Respondent offered a diametrically opposed account of his efforts and involvement. Respondent testified that it was not until March 25, 1992 that Casale retained him to assist him in obtaining the annuity proceeds for the benefit of his children. During that first meeting, respondent advised Casale that he was somewhat familiar with the rules and regulations on early withdrawal of pension/annuity funds and that, in all likelihood, the annuity plan rules would prohibit Casale from obtaining a lump sum distribution of the entire proceeds until he was unemployed for at least one year. Casale advised respondent that he had last worked on March 11, 1992. He, nevertheless, requested that respondent investigate the possibility of an earlier distribution, given his special circumstances. Also during their initial meeting, Casale advised respondent that he really did not have the funds to pay respondent a fee. Because respondent and Casale were social acquaintances and because respondent empathized with Casale and the predicament in which he found himself, respondent assured Casale that his fee would be minimal.

Thereafter, between March and December 1992, respondent had numerous telephone conversations with Mr. Schaffer or his representative in an attempt to find some legitimate way to circumvent the one-year unemployment requirement, due to Casale's

special circumstances. During that period, respondent testified, although he remained hopeful that the trustees of the fund would exempt Casale from the requirement and authorize the early withdrawal of the annuity proceeds, he continued to suspect that they would not entertain a hardship exception to the rule and would require Casale to wait the full year.

In or about December 1992, after speaking with some colleagues of his dilemma, respondent entertained the possibility of filing a motion for the issuance of a QUADRO, hoping that the trustees would obey such an order. (They, apparently, had no legal obligation to do so).

Thereafter, on or about January 7, 1993, respondent telephoned Casale and advised him of his intention to attempt to file a motion for a QUADRO and of his opinion that the trustees might not honor such an order. However, he advised, he would need a fee of $150 or $160 to defray his costs. It was Casale who offered to send respondent the money via grievant the following morning. Respondent claimed that, when grievant did appear with the money the following morning, he and grievant spoke only very briefly and very hurriedly. According to respondent, at no time did respondent advise grievant that he intended to file such a motion that day.

Admittedly, for reasons not necessarily relevant, respondent never filed the motion for the issuance of a QUADRO. Instead, on February 19, 1993, after speaking with James Estabrook, the plan attorney, respondent set out to have Casale execute all the necessary documents quickly, so that they could be submitted to the

plan trustees at their next meeting several days later (February 22, 1993).

Inasmuch as respondent had earlier obtained Casale's consent to speak directly with grievant while Casale was incarcerated, he telephoned grievant that same day and advised her of the necessity to have Casale quickly sign some documents. Respondent again telephoned grievant the following day, February 20, 1993, to ask whether she intended to visit Casale in prison that day. He had hoped that grievant would bring Casale the necessary documents to sign; he was unable to do so because he was not authorized to enter the prison. Grievant advised respondent that she could not go either. Thereafter, while the details are not quite clear, an argument ensued between grievant and respondent regarding child support. Apparently, grievant threatened to pursue Casale for child support payments while he was incarcerated, in an amount in excess of the anticipated lump sum annuity distribution. Respondent, therefore, asked grievant to sign a waiver of any arrearages while Casale remained imprisoned. Grievant refused to do so.

On that same day, February 20, 1993, Casale telephoned respondent from prison and the two reviewed the information contained in the withdrawal application. Because grievant wanted the distribution to be made directly to her, instead of through Casale, respondent would have to prepare a power-of-attorney for Casale's signature so that grievant could sign the withdrawal application in his behalf.

According to respondent, on February 22, 1993, he prepared and forwarded to Casale a power-of-attorney for his signature. He had also arranged for grievant to come to his office that day in order to sign the application for the withdrawal/distribution. However, when respondent arrived at his office, he learned that grievant had left five minutes earlier. Later that morning, Casale telephoned respondent at his office and respondent notified him of what had occurred. Respondent further informed Casale that grievant had announced to his secretary that she no longer wished respondent to handle the matter. Casale, however, asked respondent to continue to pursue the matter in his behalf. Respondent, therefore, telephoned grievant on several occasions that day. He finally reached her late in the day.

Respondent testified that grievant was angry with him for having missed their appointment. During their conversation, he offered to bring the application to her home for her signature and inquired where she lived. Grievant, still angry with respondent, replied "in New Jersey." T131. At that point, it became apparent to respondent that grievant was not going to cooperate with his efforts to have her sign the application, so he asked her what he should do with the application. Grievant responded, "do what you have to do with it." Ibid.

Thereafter, respondent received from Casale the executed power-of-attorney. On February 24, 1993, respondent telephoned Casale in prison and ascertained that it was, indeed, Casale's signature on the document. After so satisfying himself and being

familiar with Casale's signature from past dealings, respondent acknowledged and witnessed Casale's signature. At some point, he also admittedly signed grievant's signature to the application and forwarded it to Schaffer, along with the power-of-attorney. Exhibits R-7 and R-8. (While respondent testified that the signature on the application had to be notarized, the original executed application was not entered into evidence and there was no testimony indicating whether respondent himself notarized the forged signature or whether he had a secretary do so). In any event, on March 18, 1993, after respondent forwarded the documents, he telephoned Schaffer and learned that the funds would not be released until the end of May 1993. As noted above, it is not clear whether the distribution of the annuity proceeds to grievant in June 1993 was made as a result of respondent's efforts or grievant's subsequent efforts. Clearly, however, the funds were finally distributed at least one year after Casale had last worked.

Finally, respondent testified that he did not return the $160 to grievant because he believed that she delivered to him money that belonged to his client, Casale, and because Casale subsequently authorized respondent to apply it towards his fee. Respondent never charged Casale a fee beyond that amount. Similarly, contrary to grievant's assumption that she would be expected to pay the fee, respondent has never sought any monies from her.

Casale was not a grievant and did not testify or otherwise complain of respondent's conduct in this matter.

* * *

The DEC found respondent guilty of a violation of RPC 8.4(c) for his signature of grievant's name to the application for distribution without either her permission or a power-of-attorney. The DEC did not address respondent's improper acknowledgment of the power-of-attorney executed by Casale. The DEC declined to find that respondent violated RPC 1.3 because it did not find clear and convincing evidence of an attorney-client relationship between grievant and respondent. The DEC considered the relationship to be one where grievant was a third-party beneficiary, at best. Noteworthy, however, is the DEC's observation that, during his representation of Casale, "respondent actively pursued the process of obtaining the moneys . . . and actively contacted the pension/annuity fund . . . for the purpose of determining the process and procedure of how the money would be distributed." (Emphasis supplied). Hearing Panel Report at 9. It is not clear, therefore, that the DEC would have found a violation of RPC 1.3, even if it had found that an attorney-client relationship existed between grievant and respondent.

* * *

Following a de novo review, the Board is satisfied that the DEC's findings are clearly and convincingly supported by the record. Like the DEC, the Board concluded that no attorney-client

relationship existed between grievant and respondent. While it is true that grievant certainly may have been a third-party beneficiary of respondent's efforts, that can be true in a number of attorney-client relationships. In addition, while grievant and Casale may have had one common purpose, they clearly had different interests, as was evidenced by grievant's threat to pursue a claim for arrearages against Casale and respondent's request that she execute a waiver of any such arrearages. Respondent could not and did not attempt to represent both of their interests — but only those of Casale.

Parenthetically, even if it were found that an attorney-client relationship existed between grievant and respondent, the record is virtually devoid of any evidence to suggest that respondent acted less than diligently in this matter, as charged in the complaint.

It is clear, however, that respondent improperly witnessed Casale's signature on the power-of-attorney and forged grievant's signature to the application. Had respondent's conduct been limited to his improper witnessing of Casale's signature, then the appropriate discipline would consist of an admonition, as urged by the DEC. However, respondent's conduct in this case was compounded by his forgery of grievant's signature to the application.

This case closely parallels matters that have resulted in the imposition of a reprimand. For example, in In re Spagnoli, 89 N.J. 128 (1982), the Court imposed a public reprimand upon an attorney for signing his client's name on two affidavits that he witnessed and then conformed and filed with the court. Similarly,

in In re Robbins, 121 N.J. 454 (1990), the Court imposed a public reprimand on an attorney who signed a deed purporting to bear the signatures of the parties-in-interest, completed the acknowledgement and executed the jurat thereon. He then submitted it to the planning board for the purpose of accomplishing the memorialization of a land subdivision. The attorney claimed that he intended to "white-out" the illegitimate signatures and obtain proper signatures prior to recording the deed. There was no clear and convincing evidence that the attorney's acts were undertaken without the grantors' acquiescence. An aggravating factor, however, was the attorney's personal stake in the transaction, as one of the parties-in-interest. Another aggravating circumstance was his prior six-month suspension for representing a client in municipal court while acting as prosecutor and for thwarting the prosecution of criminal charges by arranging for the payment of money conditioned on the dismissal of the charges.

In mitigation, the Board considered that respondent readily admitted his wrongdoing both in his answer and before the DEC. In addition, respondent derived no benefit whatever from his misconduct. Rather, he was clearly motivated by his client's and his own desire to ensure that a single mother had funds with which to support her children while his client was incarcerated. In retrospect, respondent should have insisted that grievant find some way to sign the documents that benefitted her and her children, regardless of the hardship or inconvenience she might experience. He chose instead to circumvent proper channels and got caught in

the process. This is especially tragic in light of grievant's own testimony that she would have been willing to sign anything respondent asked in order to obtain the funds, including the application he ultimately forged. It is, indeed, unfortunate for respondent that grievant chose at some point to withhold her cooperation in his efforts. Nevertheless, respondent's conduct was inexcusable.

Under a totality of the circumstances, a five-member majority of the Board determined to impose a reprimand for respondent's misconduct. Two members would have imposed an admonition. Two members did not participate.

The Board further directed that respondent rei imburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/11/95

By: Raymond R. Trombadore
Chair
Disciplinary Review Board