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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-114

IN THE MATTER OF :
HAMLET E. GOORE, JR. :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 23, 1993

Decided: January 28, 1994

M. Richard Merklinger appeared on behalf of the District VB Ethics Committee.

Melvyn H. Bergstein appeared on behalf of respondent, who was also present.

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

This matter was before the Board on a recommendation filed by Special Master John J. D'Anton that respondent's current proctorship be indefinitely extended. The Special Master did not recommend any further private or public discipline against respondent, although charges of unethical conduct in two counts of the three-count complaint filed against respondent were sustained. The third count of the complaint was not before the Special Master or the Board, but was resolved at a prior hearing before the District VB Ethics Committee. The first count of the complaint charged recordkeeping improprieties arising from respondent's actions in failing to distribute inactive client trust account balances promptly to the appropriate clients, as well as his

failure to correct the problems promptly, when notified by the Office of Attorney Ethics ("OAE"). Respondent admitted the allegations in Count One. Count Two generally charged that, in his representation of nine bankruptcy clients, respondent filed inaccurate and false fee certifications with the bankruptcy court. Respondent disputed a majority of these allegations.

COUNT ONE

As noted previously, in his answer to the formal complaint, respondent admitted all of the allegations in the first count of the complaint. The pertinent parts of that complaint charge that, following an audit performed by William J. Morrison, CPA, covering the time period from April 1, 1984 to February 28, 1986, respondent was requested to clear inactive trust balances totaling more than $73,000, which were disclosed by the audit and which remained in his trust account at the end of 1986. Respondent was directed to disburse the funds either to his clients or to himself, if the funds represented fees. On November 21, 1986, he was further requested to provide the OAE, by January 10, 1987, with an analysis and certification regarding his disbursement of the funds. Respondent failed to reply to that initial request. He was then contacted by the OAE on February 2, 1987, at which time a response to the November 21, 1986 letter was requested. He was advised that disciplinary charges could follow, should he fail to respond. Respondent did not file a reply to that inquiry. A grievance was then filed and the matter proceeded to the formal complaint stage.

The specifics regarding the trust balance, as disclosed by Morrison, demonstrate that respondent carried a balance in excess of $73,000 in his trust account as of February 28, 1986. No activity had occurred in a substantial portion of these client accounts for more than four months. Indeed, more than twenty-five percent of the funds belonged to clients upon whose accounts there had been no activity for more than one year. Nearly $11,000 of the balance on hand represented accounts in which there had been no activity for more than two years. A substantial portion of the $73,000 was, thus, past due and payable to various clients. In carrying this balance and in failing to correct promptly the problems noted by the OAE, respondent was charged with, and admitted, a violation of R. 1:21-6. Additionally, respondent was charged with violations of RPC 1.1 generally (the complaint did not differentiate between gross negligence and pattern of neglect); RPC 1.3, lack of diligence; RPC 1.4, failure to communicate (presumably with the OAE); and RPC 1.15. A violation of RPC 8.1(b) was not alleged in this count, despite the apparent factual support for such a charge.

COUNT TWO

The second count generally charged that respondent filed inaccurate and false fee certifications with the bankruptcy court in his representation of nine bankruptcy clients. Violations of the following RPCs were charged: RPC 1.5(a) (unreasonable fee); RPC 3.3(a)(1) and (5) (candor toward the tribunal; RPC 4.1(a)(1)

(in representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person); RPC 5.1 (responsibilities of a partner or supervisory lawyer); RPC 5.3 (responsibilities regarding non-lawyer assistants); RPC 8.4(a) (violation of rules of professional conduct), and RPC 8.4(c) (dishonesty, fraud, deceit or misrepresentation). The Special Master concluded that the DEC presenter had "met its burden of proof as to proving the allegations set forth in counts one and two... and satisfied by clear and convincing evidence... the respondent's violations of those rules."

In every one of the individual bankruptcy matters concerned herein, respondent signed and filed a Form 219B statement (now a 2016(b) statement), also referred to by the trustee in bankruptcy as a "fee disclosure statement." That statement sets forth both the amount of the fee paid and the balance due, and requires signature by the attorney involved. Respondent, in his answer to count two, denied that the form provided to the bankruptcy court regarding the fee charged was a certification. It was his position that the form was both uncertified and unsworn.

Bankruptcy matters are somewhat unique in terms of attorneys' fees. Pursuant to Section 329B of the Federal Bankruptcy Code, the bankruptcy court is empowered to review each fee charged in a bankruptcy matter in order to prevent overreaching by attorneys and, similarly, to protect the creditors of the bankrupt estate. Here, respondent listed fees on the fee disclosure forms that were significantly less than the fees actually charged, thereby avoiding

reduction of the fees by the bankruptcy court. Indeed, in at least one of the nine cases referenced in Exhibit J-5, the trustee in bankruptcy actually petitioned the court for a return to the trustee of a significant portion of the fee charged by respondent. It also appears from portions of Exhibit J-5 in evidence that the bankruptcy court is not usually generous in awarding a fee to a bankrupt's attorney. Given the limited funds available to all parties in these actions, it is clear that the court's goal is to protect the rights of the bankrupt as well as the rights of the creditors involved.

A discussion of the nine bankruptcy cases involved follows:

1. Simon N. and Caroline N. Oquekwe

Respondent represented the Oquekwes in two separate bankruptcy petitions. As reflected in the trustee's petition to turn over excess fees filed with the bankruptcy court, in the first petition (docketed as 83-06858), the 2016(B) form (formerly a 219(b) form), signed by respondent reflected that the client had paid him $500 together with a $60 filing fee and that a balance of $250 remained in that particular matter. In the second petition filed by respondent on behalf of the Oquekwes, the attorney disclosure statement (Form 2016(B) or 219(b)) listed a total fee of $650. Of that amount, $400 had been paid at the time of filing and a $250 balance remained. The $60 filing fee had also been paid at that time. The Oquekwes claimed that a much larger fee was actually charged and paid. In the first case, the Oquekwes stated that fees

totaling more than $4,000 were charged, of which they paid a total of $1,320. In the second case (docketed as 84-05365), the Oquekwes indicated that they had agreed on a total fee of $1,300 and had paid $900. An additional fee of $2,400 was allegedly later charged, of which they paid $600. Respondent, in his answer, denied that either statement filed by him in the two bankruptcy matters was inaccurate or false.

The report of the accountant, Morrison, indicates that $1,200 was received, according to respondent's cash receipts records. However, this finding is contradicted by respondent's own records. In a letter forwarded on June 19, 1985 by respondent's office to Simon Oquekwe, a total charge of $4,132 is listed for the 1983 bankruptcy matter. The document notes that a total of $1,320 had been received as of the date of the bill and that a balance of $3,812 remained owing. Exhibit J-5 in evidence.

2. David Kilsen

The attorney disclosure statement signed by respondent and filed in Kilsen's bankruptcy matter reflected a total fee of $650. As of the time of filing, according to the 2016(b) form, $400 had allegedly been paid and a balance of $250 remained. The client indicated that, prior to the filing of the petition, he had actually paid $800, and that he paid an additional $400 after the filing.

In his answer, respondent noted that Kilsen did pay more than $400 prior to the filing of the complaint. He stated that a total

of $985 was paid, including the filing fee. He further stated that the client later paid an additional $400. Respondent admitted that he had "no explanation for this discrepancy." Answer at 2.

Morrison's report indicates that respondent's cash receipts show a total of $1,325 received in behalf of Kilsen for this bankruptcy matter.

3. Norwin P. Jones

In the Jones matter, the interim trustee, by way of affidavit, stated that respondent listed a fee of $550, paid in full, on the fee disclosure statement. The client claimed that, in fact, he had paid a total of $910 for this Chapter 7 proceeding. Six months after filing the initial fee disclosure statement, respondent submitted a new form reflecting that a fee of $850 had been paid.

In his answer to the ethics charges, respondent stated that, of the $910 received at the time the petition was filed on January 31, 1985, $60 was utilized for the filing fee. He also claimed that $300 was intended to be used for a pre-existing Chapter 13 case "which was to have been filed but which was withheld as a result of the client's change of position." Respondent indicated that the new form was filed at the trustee's request, on June 12, 1985.

Morrison's report utilized respondent's cash receipts to establish that a total of $925 was received from Jones.

4. Frank and Martina Sowinski

The disclosure statement filed in this matter reflected a fee of $650. Exhibit J-5. The clients disputed this contention, stating that they had paid respondent a total of $1,040.

In his answer, respondent contended that the disclosure statement was "inaccurate but not false." He claimed that an additional $200 had been charged for a Chapter 13 proceeding for Frank Sowinski, which proceeding was later abandoned, and that an additional $100 was charged to avert a wage execution against Martina Sowinski. Exhibit J-5 appears to establish that bankruptcy matters cannot be billed in this fashion.

Morrison's report indicates that respondent's cash receipts show a total $950 paid by the Sowinskis.

5. Kasib El Amin

The standing trustee's affidavit filed with the bankruptcy court in this matter reflects that the 219(b) statement filed by respondent indicated a total fee of $650. Of that amount, $400 had allegedly been paid and a balance of $250 was due. The trustee further related that, in fact, the client had agreed to pay, and had actually paid, a total of $1,200. The trustee noted that, if the court accorded respondent the benefit of treating what respondent claimed was the balance due on his bill, in line with other outstanding creditors, and if that balance had ultimately been paid to him through the Chapter 13 payments, he would have actually received a total fee of $1,450.

Respondent, in his answer to the ethics complaint, stated that the 219(b) statement was "inaccurate but not false." He contended that the total fee received was $900, but that the $60 filing fee had been taken from this amount. In addition, he claimed that $82 was charged by the bank for a returned check from the client, so that, in reality, he only received $758. He further contended that the discrepancy between the $758 figure and the $650 figure listed on the 219(B) statement was "inadvertent."

Morrison reported that respondent's cash receipts reflected the receipt of $840 in fees in behalf of Kasib El Amin.

6. Alex Smith

The fee disclosure statement regarding respondent's fee in this bankruptcy proceeding showed that a total of $550 had been paid at the time of filing and that an additional $450 remained to be paid. The client stated that he had actually paid $940.

In his answer, respondent admitted that a total of $680 had actually been paid at the time of filing. Respondent, in fact, had understated the fee by $130 on the disclosure statement. Although respondent conceded the $130 "error", in an apparent contradiction, he indicated that he had, in fact, overstated the fee. Additionally, respondent contended that $200 had been paid after the petition was filed, for a total fee of $880.

Morrison reported that respondent's cash receipts showed a receipt of $620 from Smith.

7. Moses Cappard

The disclosure statement filed by respondent in this matter reflects the receipt of $550, at the time of filing of the petition in bankruptcy. A balance due of $450 is listed. Respondent, in his answer, stated that the total collected by him was $385 and that a portion of this amount went to pay a filing fee and a dishonored check charge.

Morrison reported that respondent's cash receipts showed the receipt of $325 in behalf of Cappard. The ethics file allegedly contains a letter that reflect a fee charged by respondent of $825.

8. Alger L. Harris

The standing trustee's affidavit filed in this matter indicates that a Form 219(b), signed by respondent, listed $650 as the total fee. Of that amount, $400 was paid as of the time of filing, while a $250 balance remained. The client contended that she agreed to pay $775 and that $700 had been paid at the time of filing, with a balance due of $75. The trustee noted that, should respondent receive the $250 balance through an order of the bankruptcy court, the total fee received by him would be $1,025.

Respondent, in his answer, contended that the total collected by him in this case was $694 plus the filing fee of $60. He indicates, in a somewhat convoluted fashion, that the difference between the figures represents a bank charge and "legal services performed in accordance with the subsequent amending of the petition." No further explanation is contained in the document.

Morrison, in his report, states that respondent's cash receipts journals reflected the payment of $700 by the client.

9. Arthur Naylor

The 219(b) form filed in this matter reflects that a fee of $500 had been paid and that $250 was owed. Additionally, a $60 filing fee was paid. The client contended that he had paid respondent $1,000.

In his answer, respondent stated that he had received only $560 from the client.

Morrison reported that respondent's cash receipts reflected payment of $500.

Accountant's Report

Several pertinent factors were revealed in exhibit J-3 in evidence (Morrison's report). Within that report, Morrison stated that his analysis of the fees billed to the various clients by respondent was limited by "the fact that Mr. Goore did not allow me access to his billing file." Thus, it is clear that Morrison's information with regard to some of these matters was limited to that which respondent wanted him to have. With regard to the cash receipts listing/comparison to client claims and fee certification form 219(b), Morrison stated:

> The preceding chart denotes that with the exception of the Naylor fees, Mr. Goore's internal records do not agree with the fee certifications he filed with the court; furthermore, although he amended his

> certifications, only the Smith amended certification agrees, the Jones' amended certification disagrees by $75. with Mr. Goore's records. With the exception of Moses S. Cappard, Mr. Goore received more funds from his clients in the eight instances in which his certifications differ from his cash receipts records.

Following a review of this matter, the Special Master concluded that the presenter had sustained the burden of proving the charges against respondent. The Special Master further noted that respondent acknowledged inaccuracies in most of the certifications reviewed by Morrison and admitted one actual falsehood. That admission relates to the Smith matter, where the fee was understated by $130, as conceded by respondent. The Special Master concluded, however, that it was equally clear that a majority of the fees stated on the 219(b) forms was also false.

In arriving at his conclusions, the Special Master made the following statement:

> The respondent seems to assert that his activities were those of inaccuracies and perhaps simple negligence, but that there was nothing inherently false in what he did. However, there comes a time when patterns begin to lead to conclusions about a course of action which no statements made after the fact can disturb. These records reveal that respondent reached that time.

The Special Master recommended an indefinite extension of respondent's proctorship, rather than any specific discipline for these offenses.

CONCLUSION AND RECOMMENDATION

Following a de novo review of the record, the Board is satisfied that the findings of the Special Master of unethical conduct on the part of respondent are fully supported by clear and convincing evidence.

As noted, respondent was charged in Count One of the complaint with a violation of R. 1:21-6(c), in that he failed to maintain his books and records in accordance with generally accepted accounting practices, as well as with a violation of RPC 1.1, generally; RPC 1.3, lack of diligence; RPC 1.4, failure to communicate (presumably with the OAE); and RPC 1.15. Respondent has admitted those violations. The Board is satisfied that the record confirms a finding of those violations by the requisite standard of clear and convincing.

With regard to Count Two of the complaint, the Board concurs with a majority of the findings of the Special Master. Specifically, the fees ultimately charged by respondent in these bankruptcy actions were, in large part, unreasonable. In signing and filing bankruptcy forms that contained obviously inaccurate information regarding his fees, respondent made false statements of material fact to the bankruptcy court. RPC 3.3(a)(1) and RPC 4.1(a)(1). Respondent's failure to disclose the actual fees to the trustee or the court further violated RPC 3.3(a)(5), in that the tribunal might have been misled by such failure. The Board is of the view that, as confirmed by Exhibit J-5, respondent filed

false 219(b) forms, generally understating the amount received as fees and overstating the balance due, in order to ensure that the bankruptcy court would not reduce his true fee. The Board also agrees with the bankruptcy court that respondent charged unreasonable fees. This conduct also violated RPC 8.4(c) (engaging in conduct involving deceit or misrepresentation) and, by reference, RPC 8.4(a) (violating the Rules of Professional Conduct).

The Board does not, however, find sufficient support in the record for the charges of violation of either RPC 5.1 (responsibility of a partner or supervisory lawyer) and RPC 5.3 (responsibilities regarding non-lawyer assistants). Although respondent frequently assigned associates to argue aspects of these nine bankruptcy matters in court, the record does not demonstrate the involvement of these employees in the misconduct disclosed herein, nor does it support a finding that respondent failed to direct these employees properly. The Board, therefore, recommends the dismissal of the allegations of violation of RPC 5.1 and RPC 5.3.

There remains only the issue of discipline. The Board is unable to concur with the Special Master that an extension of respondent's proctorship, which is already indefinite by Court Order, is sufficient. Similar cases where misrepresentation to a tribunal is involved have, in the past, resulted in suspensions ranging from three months to three years. See, e.g., In re Johnson, 102 N.J. 504 (1986) (three-month suspension where the

attorney made a direct misrepresentation to the court in order to obtain an adjournment and thereafter lied to the judge again in order to avoid responsibility for his conduct); In re Kernan, 118 N.J. 361 (1990) (three-month suspension where respondent, in his personal matrimonial matter, transferred property to his mother one day prior to a hearing on equitable distribution, without advising the matrimonial court or opposing counsel, thereby "imperil[ng]the court's ability to determine the truth of the matter and to reach a just result." Id. at 364. The court noted respondent's prior discipline as well as the fact that his actions were designed to defraud both the matrimonial court and respondent's ex-wife.) See also In re Silverman, 80 N.J. 489 (1979) (eighteen-month suspension for false statement in bankruptcy matter where attorney was aware of backdated documents; no prior record considered as mitigation); and In re Kushner, 101 N.J. 397 (1986) (three-year suspension, following conviction of fourth degree crime of false swearing, for direct lie in certification filed with court in personal litigation, wherein respondent claimed that his signature had been forged.)

The Board rejected respondent's contention that the fact that the bankruptcy forms were neither sworn to nor certified relieved him of responsibility. There is no dispute that respondent signed the 219(b) forms in question. It is equally clear that the forms were filed to provide information to the bankruptcy court - information on which the court would have to rely to reach a determination as to the appropriate level of the attorney's fees.

The filing of these forms, thus, constituted serious misrepresentations to the court. RPC 8.4(c) and RPC 3.3(a)(5).

In arriving at its recommendation, the Board has considered both the lengthy passage of time since the events in question – 1986 and 1987 for Count One, and 1984 and 1985 for Count Two (the bankruptcy form issues) – as well as the fact that respondent was only recently publicly reprimanded for somewhat similar conduct during approximately the same period of time (1987 and 1988). In re Goore, 127 N.J. 246 (1992). Since the time of that prior discipline, respondent, under the guidance of a proctor, has apparently performed well. Therefore, by a requisite majority, the Board recommends that respondent be publicly reprimanded for his misconduct in this case, with a continuation of the indefinite proctorship. Two members dissented, voting for a suspension of six months. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 1/28/1994 By: Raymond R. Trombadore
Chair
Disciplinary Review Board