

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 96-380

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IN THE MATTER OF :  
RICHARD J. DOYLE :  
AN ATTORNEY AT LAW :

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Decision

Argued: November 20, 1996

Decided: January 6, 1997

Terry F. Brady appeared on behalf of the District IIIA Ethics Committee.

Michele A. Querques 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 discipline filed by the District IIIA Ethics Committee ("DEC"). A four-count complaint charged respondent with violations of RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation)(count one); RPC 1.7(b)(representing a client where the representation may be materially limited by the lawyer's responsibilities to another client, third person or by the lawyer's own interests)(count two); RPC 1.7(c)(2)(conflict of interest by creating an appearance of impropriety)(count three); and RPC

8.1(b) (failure to respond to a lawful request for information from a disciplinary authority) (count four).

Respondent was admitted to the New Jersey bar in 1973. He maintained a law office in Wall Township, New Jersey, until he was temporarily suspended, on June 21, 1996, for failing to produce records and files at a demand audit conducted by the Office of Attorney Ethics ("OAE"). Respondent received an admonition in 1995 for recordkeeping deficiencies. In the Matter of Richard J. Doyle, Docket No. DRB 94-438 (February 14, 1995).

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This matter was originally before the District IX Ethics Committee. However, due to a conflict of interest between respondent's counsel and the District IX Ethics Committee, the matter was transferred to the District IIIA Ethics Committee. Apparently, as a result thereof, some confusion developed and respondent's counsel did not receive copies of requests for information made to respondent by the DEC investigator. Respondent admittedly did not reply to four requests for information from the DEC investigator. A complaint was then filed against respondent in March 1995. Respondent failed to contact his attorney upon receipt of the complaint, which was not served on respondent's counsel. Thereafter a hearing was scheduled for October 25, 1995. It was not until respondent received notice of the hearing that he

contacted his attorney. Afterwards, at the request of respondent's counsel, the hearing was adjourned to January 19, 1996.

Although respondent did not reply to the investigator's requests for information, he did file an answer to the complaint on December 12, 1995.

At the DEC hearing, respondent's counsel moved to dismiss the formal complaint, alleging that the investigation violated respondent's due process rights and right to counsel. The motion was denied. Thereafter respondent withdrew his answer and stipulated to the allegations contained in the complaint, offering only the testimony of his therapist for the purpose of mitigation as to the fourth count of the complaint (failure to cooperate with the DEC).

The complaint alleged the following:

The grievant in this matter, Steven D. Niss, and respondent had been friends from 1966 to 1991. In 1984 respondent approached Niss and a third friend, Ed Wyrwa, to form a real estate partnership for the purpose of constructing a professional office building. The partnership, Longwood Associates, was created in 1984. Thereafter, the partnership built an office complex in Wall, New Jersey, consisting of several rental units. Respondent became a tenant of the building upon its completion.

From the inception of the 1984 partnership to the time the DEC complaint was filed, respondent was its managing partner and conducted all of the partnership business, both as a partner and as its attorney.

At respondent's suggestion, the three partners' wives also became partners in the business venture. In 1991, respondent confessed to Niss that he had been having an extra-marital affair with Niss' wife, Elizabeth Niss, since 1982.

Count one of the complaint alleged that respondent's extra-marital affair with Niss' wife was a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In count two, the complaint alleged that respondent's representation of Niss, while representing Niss' wife, as well as participating in the partnership as a partner and as the attorney for the partnership and the individual partners, was a conflict of interest, in violation RPC 1.7(b).

Count three alleged that respondent's representation of Niss, Niss' wife and the other partners, while participating in the partnership and acting as the attorney for the partners and the partnership, gave rise to an appearance of impropriety "and posed a substantial risk of disservice to the public and to all parties involved in the partnership, in violation of RPC 1.7(2)."

Finally, the fourth count of the complaint alleged that respondent failed to reply to four letters sent by the DEC investigator, requesting an explanation and response to Niss' November 12, 1993 grievance. The investigator sent letters on April 26, May 13, May 20 and August 25, 1994.

In a September 1995 telephone conversation with the DEC investigator, respondent promised to submit a reply to the

grievance, but failed to do so. Respondent was, therefore, charged with a violation of RPC 8.1(b).

At the DEC hearing, respondent stipulated to the foregoing facts. Thereafter, J. Dennis Cadigan testified in behalf of respondent. Cadigan, a licensed clinical psychologist, testified that respondent had been under his care since May 1989. He had diagnosed respondent as suffering from a condition known as "post traumatic stress disorder ("PTSD") - delayed type." The disorder had its roots in a childhood injury that was exacerbated by respondent's tour of duty in Vietnam.

According to Cadigan,

[The] syndrome comprises a series of features based on the fact that some experience has had an enormous traumatic impact on someone's inner spirit and the manifestation of this trauma shows up classically in nightmares, flashbacks starting to [sic] the day with disorientation to time and place thinking one is back in the situation that they were originally in. Major bouts of anxiety due to the threatening disorientation accompanies this syndrome. General procrastination and other disorientating states including a depressive feeling and usually there's a pattern of disfunction in one's personal and vocational life.

[T59-60]

Cadigan indicated that, in June 1993, he changed his initial diagnosis to "PTSD - chronic type." Cadigan explained the difference between the two diagnoses:

The difference is one rather where in a delayed situation the trauma may have been suppressed and a person goes on functioning for many years and then a sudden event comes along to precipitate a breaking up of that defense that has buried the trauma, and in such cases then the precipitating event unleashes the old memories of that event that was so traumatic. In chronic type what you have is a situation where it is for the most

part consciously known by the person that they are suffering from it and they are unable to do that much about it without help.

[T60-61]

Cadigan explained that respondent's disorder was triggered by certain events in his life. For example, in May 1989, respondent's house and car were vandalized and papers were stolen from his briefcase. As a result, respondent began to experience flashbacks, nightmares, daytime flashbacks, anxiety, depression and all the other classic symptoms of a post-traumatic stress disorder from his time in Vietnam. Cadigan explained that this disorder can be exacerbated by other stressful situations that come along in life that provide some type of threat. Cadigan further explained that the timing of respondent's therapy coordinated with the time of year respondent had been sent to Vietnam. Cadigan claimed that the PTSD - chronic type was consistent with respondent's failure to cooperate with the DEC investigator. Cadigan noted, though, that respondent was capable of distinguishing between right and wrong.

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The DEC found that, because respondent stipulated to the facts in the complaint, he was guilty of the professional misconduct alleged therein. The DEC concluded, thus, that it need only determine whether mitigating circumstances existed.

The DEC found that, although respondent might suffer from PTSD, his condition did not excuse or even explain his professional misconduct. The DEC stressed that respondent's own psychologist conceded that he was able to differentiate between right and wrong. The DEC also remarked that it was not until 1989 that respondent sought treatment for his psychological problems caused by his service in Vietnam. It was in that year that respondent learned that an audit of his attorney records was to be conducted by the OAE. As the DEC noted, the audit dragged out until 1994 because respondent's financial records were "allegedly stolen from his car and had to be reconstructed." The audit showed deficiencies in respondent's bookkeeping, for which respondent received an admonition.

The DEC was also disturbed by the fact that, in 1982, the year respondent admittedly began his affair with Elizabeth Niss, he drafted wills for both Elizabeth and Steven Niss naming himself and his wife as legal guardians for the Niss' children upon the death of both of their parents. The DEC found that, in light of the serious financial implication of being named the guardian in his clients' wills, respondent was clearly aware of a conflict of interest and appearance of impropriety in drawing up the wills while having an affair with Elizabeth Niss. The DEC noted that, although the issue had not been raised during the hearing, evidence of the conflict had been supplied in the ethics grievance filed by Steven Niss.

Respondent submitted a number of character letters that the DEC discounted, finding that his penitence set forth in the letters did not erase the fact that he had violated the Rules of Professional Conduct. The DEC remarked that "[m]any feel remorse and regret after they have been caught." The DEC further found that respondent's ethics violations were not brief in duration; they occurred every day while respondent was romantically involved with Niss' wife, a period that extended for more than a decade.

As a result of the foregoing, the DEC found that respondent's extra-marital affair with Elizabeth Niss while representing the Nisses in an individual capacity and as partners, while participating in the real estate partnership as the managing partner and legal counsel, constituted unethical conduct in violation of RPC 8.4(c). The DEC also found violations of RPC 1.7(b), RPC 1.7(c)(2) and RPC 8.1(b).

The DEC determined that there were miscommunications between the secretary of the DEC and respondent's attorney, through no fault of respondent. The DEC considered that factor in mitigation of the finding of a violation of RPC 8.1(b). As noted earlier, however, the DEC did not find any mitigating circumstances or medical conditions that would excuse or explain respondent's other misconduct.

The DEC recommended that the maximum discipline to be imposed be a short-term suspension.

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Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence. However, even though respondent admitted all of the allegations in the complaint, those allegations do not support all of the DEC's findings. Respondent was charged with a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for essentially engaging in an extra-marital affair with Niss' wife. That rule, however, is not intended to address this type of conduct.

As to the conflict of interest charges, no evidence was presented of an actual conflict of interest. Niss alleged in his grievance that respondent was involved in a conspiracy with Elizabeth Niss to defraud him of the funds he invested in the partnership and that respondent failed to increase rents, as agreed, thereby causing him to unnecessarily invest more than \$50,000 in the partnership. However, this conduct was not alleged in the complaint and no evidence was presented below to substantiate Niss' claims.

Niss' grievance also accused respondent of commingling partnership funds and funds in his attorney business account and of improperly identifying partnership contributions for purposes of tax evasion. In addition, Niss claimed that respondent prepared his and Elizabeth's wills, naming himself and his wife as the guardian of the Nissess' children, with improper motives in mind.

Here, too, the complaint was silent as to these issues and no evidence was presented to support Niss' claims.

Accordingly, the Board cannot find respondent's representation of the partnership while participating as a partner and engaging in an extra-marital affair with one of the partners gave rise to a conflict of interest situation in violation of RPC 1.7(b). The only violation found on this record is RPC 1.7(c)(2) (appearance of impropriety). The Board finds that respondent's conduct gave rise to a situation in which an ordinary knowledgeable citizen acquainted with the facts would conclude that the multiple representation posed a substantial risk of disservice to respondent's client. The Board finds that respondent's conduct in this regard diminishes the public's confidence in the profession. Finally, the Board did not find a violation of RPC 8.1(b) because respondent did, in fact, file an answer to the complaint and did appear at the DEC hearing.

It is well-established that, in cases involving a conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. In re Berkowitz, 136 N.J. 134 (1994). Here, although Niss alleged in his grievance that he lost \$50,000 as a result of his investment, there was no evidence to substantiate this claim. Accordingly, the Board cannot find that there was serious economic injury warranting more severe discipline than a reprimand.

Based on this limited record, the Board unanimously voted to impose a reprimand. One member did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/6/97



LEE M. HYMERLING  
Chair  
Disciplinary Review Board