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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 92-226

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IN THE MATTER OF :  
: :  
HARRY DREIER, :  
: :  
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: July 15, 1992

Decided: September 25, 1992

Edward J. Glynn, Jr. appeared on behalf of the District XIII Ethics Committee.

Noel F. Schablik appeared on behalf of respondent.

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

This matter is before the Board based upon a recommendation for public discipline filed by the District XIII Ethics Committee (DEC), arising from respondent's action, or lack of action, in an estate matter.

Respondent was admitted to the practice of law in New Jersey in 1976 and maintains an office in Watchung, Somerset County.

The facts of this matter are as follows:

In late November 1988, Kimberly M. Epstein met with respondent to discuss finalizing the administration of the estate of her late husband, Kenneth Epstein, who died on November 17, 1988. Respondent and the decedent had known each other since childhood and respondent had previously handled legal matters on his behalf.

Respondent and Mrs. Epstein also agreed that respondent would draft a new will for her, which he did. The next meeting between the two did not take place until April 25, 1990, on which date the will was executed and Mrs. Epstein gave respondent a check for \$500, to cover his fee for drafting the will and for completing the administration of the estate. Respondent failed to provide Mrs. Epstein with a copy of the will.

In addition to the will, respondent prepared a New Jersey transfer inheritance tax return that was also executed on April 25, 1990 by Mrs. Epstein, as executrix of her husband's estate. The return was never filed with the Division of Taxation. Mrs. Epstein testified that, in the seventeen months between her two meetings with respondent, she had made approximately one dozen attempts to contact him. Although she was unable to say that she and respondent had not spoken at all during that time period, she was certain that she had not received information about her matters.

When Mrs. Epstein became concerned about the status of the tax return and of her new will, she began telephoning respondent's office asking for information and requesting a return call from him. She was able to speak with respondent only once (T12/31/91 25). Respondent admitted receiving messages from Mrs. Epstein between August and October 1, 1990, through his secretary (Respondent's letter-brief at 9). According to Mrs. Epstein, during a conversation with respondent's secretary on October 1, 1990, Mrs. Epstein informed her that, if she did not hear from respondent by the end of the week, she would "take other measures"

(T12/31/91 23). Respondent failed to return Mrs. Epstein's call.

In or about November 1990, Mrs. Epstein retained another attorney to represent her in connection with her husband's estate and her will. On November 5, 1990, Mrs. Epstein wrote to respondent informing him that the attorney was now representing her and asking that her files be turned over to him. Also on that date, the attorney wrote to respondent, requesting that the latter contact him regarding the estate. Despite numerous telephone calls from Mrs. Epstein and the attorney, respondent failed to contact them and the files were never turned over. Respondent testified that he did not comply with their requests because he had "shut down." By letter dated December 18, 1990, the attorney informed respondent that a messenger would be arriving at the latter's office on December 19, 1990 at 10:00 a.m., to pick up Mrs. Epstein's file. Although respondent did retrieve the file, he neither made a copy of it nor asked that someone else copy it, believing that he would copy it when the messenger arrived, since it was a small file. Apparently, the messenger did not appear and respondent took no steps to either investigate that fact or to send the file to Mrs. Epstein's new attorney.

On April 10, 1991, the DEC investigator sent a copy of Mrs. Epstein's grievance to respondent and requested that he reply in writing within two weeks.<sup>1</sup> On May 3, 1991, the investigator

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<sup>1</sup>Respondent testified that, at the time of the inquiry, he was unaware that the tax return had not been filed (T3/4/92 112).

telephoned respondent's office and left a message for him to return the call, which respondent failed to do. On May 7, the investigator telephoned again and, this time, was able to speak with respondent. The latter was advised to furnish a written response to the grievance as soon as possible. On May 20, 1991, the investigator sent a letter to respondent confirming the fact that respondent would be providing a written reply and requesting that he do so as soon as possible. As of the date of the filing of the formal complaint, respondent had not provided a reply to the grievance.

Respondent's answer essentially admitted the allegations against him. However, he alleged that he was suffering from an emotional disability that prevented him from acting appropriately. Respondent and his treating psychologist, Daniel A. Sugarman, PhD., testified that respondent's emotional disability impaired his representation of Mrs. Epstein.<sup>2</sup> According to Dr. Sugarman's testimony, respondent suffers from chronic depression and from a dysthymic reaction, which caused him to "shut down" and left him unable to handle the Epstein matter. Apparently, respondent and Kenneth Epstein had known each other since childhood and, although they did not maintain a social relationship, they did have a business relationship. Dr. Sugarman testified that respondent was unable to cope with Kenneth Epstein's death, which brought his own mortality into his mind. Respondent had also been forced to deal

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<sup>2</sup>Dr. Sugarman treated respondent between 1980 and 1989, and began treating him again on December 14, 1991. As of the date of the DEC hearing, Sugarman was still treating respondent.

with a number of deaths in his family in prior years, further exacerbating the situation. Dr. Sugarman then referred respondent to Michael Kenin, M.D., a psycho-pharmacologist, who prescribed Prozac for respondent. According to Dr. Sugarman, the medication appears to be benefiting respondent, who has shown improvement since December 14, 1991.

Respondent also testified about the April 1991 illness and brief hospitalization of his uncle, with whom he is in practice and has a very close relationship. According to respondent, at the time that he received the communications from the DEC investigator, his uncle had been hospitalized and respondent was busy at the hospital. When asked if his uncle's condition had become an excuse for him to not respond to the DEC investigator, respondent stated:

Exactly correct. It became very convenient for me, you know, just to say, well, I got to do this or I can't do that, you know, spending a lot of time out of the office in terms of going to see him, bringing him -- because he felt okay once he was in the hospital, they kept him there really because they didn't know what was happening, I would bring him some work, you know.

[T3/4/92 117]

Respondent also testified about new procedures later instituted in his office, including an additional computer system, which should safeguard against future difficulties (T3/4/92 126).

The DEC determined that respondent violated RPC 1.3, RPC 1.4, RPC 8.1 and, also RPC 1.1(b), when his conduct in this matter is considered in conjunction with the conduct for which he had been

previously disciplined.<sup>3</sup>

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is persuaded that the DEC's findings of unethical conduct are supported by clear and convincing evidence.

The DEC determined that respondent violated RPC 1.3, RPC 1.4 and RPC 1.1(b). Although the Board agrees with the DEC with regard to the first two of these findings, the Board is unable to concur with the DEC that a violation of RPC 1.1(b) (pattern of neglect) is warranted. The misconduct leading to respondent's first reprimand spanned the years 1978 through 1981. In the Board's view, that misconduct is too remote in time to be part of a continuing pattern.

The DEC also determined that respondent violated RPC 8.1(b) in that he failed to respond to the DEC's requests for information. The DEC properly considered that the requests had taken place in 1991, over eighteen months after Mr. Epstein's death. Respondent had joined a new law firm by that time and hence, had more structure and assistance.<sup>4</sup> The DEC further found that

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<sup>3</sup>Respondent's first public reprimand was issued in 1983 for misrepresenting the status of a lawsuit to his clients and further attempting to mislead them by providing a false docket number in the case after failing to file a complaint. In re Dreier, 94 N.J. 396 (1983). Respondent's second public reprimand was issued in 1990, when he was found guilty of lack of diligence and failure to communicate with the beneficiary of a trust in his capacity as trustee. In re Dreier, 120 N.J. 154 (1990).

<sup>4</sup>Respondent's present law partnership began on January 1, 1990.

"[r]espondent's explanation that his failure to respond to the Committee, (despite numerous requests by the investigator that he do so), was related to his uncle's brief hospitalization, pushes causation to the breaking point" (Hearing Panel Report at 8). The Board concurs. Like the DEC, the Board concludes that respondent violated RPC 8.1(b).

In his first run-in with the disciplinary system, respondent brought out the deaths of his aunts as mitigation. Respondent "claimed that he was, at that time, under pressure and was undergoing psychological treatment as a result of the death of three aunts within a very short span of time."<sup>5</sup> In re Dreier, supra, 94 N.J. at 398. Since that time respondent has also lost his infant son, his father and another aunt. Although those tragic losses occurred well before respondent's misconduct in this matter, the Board cannot ignore the cumulative effect that a series of tragedies has had on respondent.

Dr. Sugarman provided extensive testimony regarding respondent's psychological problems and, particularly, his reaction to the death of Mr. Epstein, explaining that respondent "shut down"<sup>6</sup> and was unable to function.<sup>7</sup>

In its report the DEC noted that

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<sup>5</sup>The aunts died between November 1980 and February 1981.

<sup>6</sup>Respondent testified that the only other times he "shut down" were in the two prior ethics matters (T3/4/92 139-140).

<sup>7</sup>Dr. Sugarman also testified that respondent did not react well to aggressiveness (T3/4/92 34). The Board noted, however, that nothing in the record indicates that Mrs. Epstein became aggressive with respondent (See T3/4/92 101).

[t]he panel's difficulty with Dr. Sugarman's testimony is that Kenneth Epstein cannot accurately be described as a 'good' or 'close' friend of Respondent and, more importantly, Respondent did not 'shut down' in handling matters related to the late Mr. Epstein. Respondent prepared the New Jersey Inheritance Tax Return and Mrs. Epstein's Will with no apparent difficulty. He appeared with Mrs. Epstein at the Surrogate's Office. Respondent was also able to prepare new Wills for Kenneth Epstein's parents, documents that removed the late Mr. Epstein as beneficiary.

[Hearing Panel Report at 8]

The Board concludes that, because of Mr. Epstein and respondent's friendship, the death of his friend was a painful experience for respondent, built upon other painful experiences. While he may have been able to function somewhat in handling this matter, respondent was not capable of fulfilling his obligations to his client and to the estate of his friend.

There is no doubt, however, that respondent was guilty of lack of diligence and failure to communicate in one matter, as well as failure to cooperate with the DEC. In the past, similar conduct has resulted in the imposition of a public reprimand. See, e.g., In re Williams, 115 N.J. 667 (1989) (gross neglect in one matter, failure to cooperate in one matter, lack of cooperation with DEC investigator and failure to file an answer); In re Beck, 118 N.J. 561 (1990) (pattern of neglect in three matters and failure to communicate); In re Cervantes, 118 N.J. 557 (1990) (lack of diligence in two matters, failure to communicate in two matters and misrepresentation in one matter).

Respondent has been publicly reprimanded twice. It could be argued that more stringent discipline should be imposed to protect the public from an attorney who has already passed through the



disciplinary system twice. However, the Board does not believe that a "bright line test" is the appropriate way to determine the quantum of discipline in this type of case. In light of the mitigating factors in this matter, as well as the fact that the within violations, standing alone, might merit a private reprimand, the Board does not believe that a suspension from the practice of law is warranted. See In re Rosenblatt, 118 N.J. 559 (1990) (where an attorney received a third public reprimand after a finding of lack of diligence in a personal injury matter and failure to return the client's file within a reasonable time after the representation was terminated.)

The Board's majority recommends that respondent be publicly reprimanded for his misconduct in this matter, with a cautionary word that further disciplinary infractions shall result in the imposition of sterner discipline.

During his testimony, Dr. Sugarman indicated that a proctor would be helpful for respondent (T3/4/92 70). The Board agrees with that recommendation and suggests that the proctorship be for an indefinite period and continue until such time as respondent is capable of practicing competently on his own.

The Board noted that Dr. Sugarman indicated that, by 1988 and 1989, respondent had made "considerable progress" during his treatment (T3/4/92 30-33). Respondent then took himself out of Dr. Sugarman's care, reentering therapy less than two months after the formal complaint in this matter was filed against him, experiencing what Dr. Sugarman called "distress" (T3/4/92 38). Given that

respondent previously ended his psychological treatment, when he obviously was not ready to do so, respondent should be required to stay in therapy until such time as treatment shall no longer be required for his psychological difficulties. The Board majority so recommends, and, further recommends that respondent be required to submit psychiatric reports every six months confirming his continuing fitness to practice law.

Two members dissented from this determination, believing that a three-month suspension was the appropriate quantum of discipline for respondent's misconduct in this matter. Three members did not participate.

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

Dated: 9/25/92

By: Elizabeth L. Buff  
Elizabeth L. Buff  
Vice-Chair  
Disciplinary Review Board