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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-045

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IN THE MATTER OF  
ROWLAND V. LUCID, JR.,  
AN ATTORNEY AT LAW

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Decision of the  
Disciplinary Review Board

Argued: April 19, 1995

Decided: October 2, 1995

Stephen D. Cuyler appeared on behalf of the District X 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 the Board based on a recommendation for discipline filed by the District X Ethics Committee (DEC). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 1.15(b) (failure to promptly turn over property of another) in connection with his handling of an estate matter. Respondent was also charged with a violation of RPC 1.5(b) (failure to communicate the basis of his fee in writing) in connection with a real estate transaction. Further, respondent was charged with a violation of RPC 1.1(b) (pattern of neglect), when this matter was considered along with an earlier matter for which respondent received a private reprimand on April 28, 1993.

*Final*

Respondent was admitted to the New Jersey bar in 1968. He maintains an office in Morristown, Morris County. As noted above, respondent was privately reprimanded, by letter dated April 28, 1993, for failure to turn over the balance of the assets of an estate or to provide an accounting, despite requests by the executor that he do so. He also failed to comply with a court order to provide an accounting of the estate assets and to turn over the estate file and a separate real estate file to substituted counsel.

Although the complaint is silent in this regard, respondent also received an earlier private reprimand, on June 22, 1990, for failure to communicate and lack of diligence in a matrimonial matter.

In November 1985, respondent was retained to represent the estate of Ethel Paugh by the executrix, Dorothy Covert, daughter of the decedent. Ms. Covert is now deceased as well. Ms. Paugh died on or about November 3, 1985. One asset of Ms. Paugh's estate was a 32.5% interest in a closely held corporation, C.W. Paugh, Inc. ("the corporation"). In 1986 and 1987, a series of communications took place between respondent, Roy Kurnos, Esq., counsel for the corporation, Harvey Shoner, the accountant for the corporation and Ms. Covert regarding the corporation's valuation, tax returns and dissolution. By letter dated May 29, 1986, Mr. Kurnos, according to Mr. Shoner's instructions, distributed \$6,500 to Ms. Covert as executrix of Ms. Paugh's estate. These funds represented income to the corporate property. Ms. Covert turned those funds over to

respondent. By letter dated March 12, 1987, Mr. Kurnos advised respondent that he was holding the payoff of a mortgage held by the corporation, in an amount slightly over \$30,000. He further advised respondent that Mr. Shoner had instructed Mr. Kurnos to withhold \$1,750 for legal and accounting fees, leaving \$28,542.39 to be disbursed.

In or about May 1987, the corporation's final tax returns were filed and the corporation was dissolved. By letter dated May 18, 1987, Mr. Kurnos advised Ms. Covert that, after the payment of federal and state taxes as well as accounting and legal fees, the estate of Ethel Paugh would receive \$8,869.36. Ms. Covert agreed to the distribution. After respondent received tax waivers, on November 25, 1987 he made a partial distribution of the estate assets. There are no allegations of misconduct by respondent up to this point.

Respondent stated that, by November 1987, over \$185,000 had been distributed to the beneficiaries. Respondent, however, held \$5,800 in escrow in case of additional tax liability. The allegations against respondent arise from his retention of that \$5,800.<sup>1</sup> According to respondent, he had discussed with Mr. Shoner the possibility of an additional tax liability against the corporation, whereupon he withheld \$5,800 because of his fear that there would be future corporate taxes owed. The corporation had

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<sup>1</sup> The record is unclear whether the funds respondent counted in that amount were solely the property of the estate or whether they also included funds belonging to Olive Collins (see discussion, infra). It is also unclear if the funds were moved to other bank accounts and/or commingled. There are, however, no allegations of misconduct in this regard.

been a subchapter S corporation, with provisions about passive income. Apparently, the corporation had received only interest income, which is considered a passive asset. Accordingly, the corporation ran a risk of owing additional taxes. Respondent explained that:

Mr. Shoner did not directly say to me you should hold moneys, but when I asked him about the liability he said it is a distinct risk because the moneys coming into the hands of the corporation are all passive income and this is a Subchapter S Corporation and at that time the I.R.S. regs were quite clear that Subchapter S Corporations lost its status if the majority of its income was passive in nature and the only income coming into that estate at that time was passive income; i.e. interest on a mortgage. So it was a real concern.

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Mr. Shoner did not suggest that respondent hold a specific sum. Respondent withheld an amount he deemed sufficient.

Respondent did not inform the beneficiaries, in writing, that he was holding the additional funds. He stated that he had ongoing communications with Ms. Covert and that they had discussed the difficulty in disbursing the funds and then trying to retrieve them in the future, if needed; Ms. Covert had agreed that the funds remain in escrow. According to respondent, at the time of the distribution, Ms. Covert had all of the estate's financial information and was to convey to the other beneficiaries what had been distributed and what was being withheld. Respondent testified that it had not occurred to him to disburse the funds and have the beneficiaries sign a refunding bond and release.

By letter dated October 1, 1992, Donna M. Holmgren, a beneficiary of the estate and the grievant herein, requested copies

of the statement of accounting, noting that the "principal heirs" had received neither that document nor a release and refunding bond indicating that the estate had not yet been settled (Exhibit P-1). This was the only correspondence respondent recalled receiving from Ms. Holmgren or from the other beneficiaries. Respondent testified that he attempted to call Ms. Holmgren at home, but was unable to contact her. He did not write to Ms. Holmgren because he thought she would call him or he would eventually reach her. She, thereafter, contacted the DEC and filed a grievance against respondent in January 1993.

By letter dated January 28, 1993, respondent inquired of Mr. Shoner whether all tax liability risks had been resolved and the escrowed funds could be disbursed. Respondent had not communicated with Mr. Shoner, between late 1987 and January 1993, regarding the corporation's tax liability. By letter dated February 2, 1993, Mr. Shoner replied that he was unaware of any outstanding tax liability, but that the issue could be raised in the future. Respondent testified that he was ready to make the final distribution of the escrowed funds at that time, but feared that it would appear that he had made the distribution solely because of the ethics matter. Respondent, therefore, made the final distribution of the estate assets on May 23, 1994, the day before the DEC hearing. Respondent did not send out the funds owed to Donna Holmgren (under \$400) because by then she was deceased and he was unaware to whom the funds should be forwarded.

Pamela Holmgren Scappa, Ms. Paugh's granddaughter and the grievant's sister, testified before the DEC. According to Ms. Scappa, she telephoned respondent's office several times in 1987 regarding the Paugh estate. Although she left messages with his secretary, respondent did not return her calls. She further testified that she sent him a letter in 1987, asking when they could anticipate final disbursement of the funds. According to Ms. Scappa, respondent had forwarded a letter informing the beneficiaries of the small balance held at the time that he had disbursed the funds in November 1987. This assertion was contrary to respondent's testimony that he did not send such information in writing. Respondent did not reply to Ms. Scappa's letter. In fact, respondent did not recall having received the letter.

Ms. Scappa testified that she had no further contact with respondent until she telephoned him in June 1993. Respondent indicated that there was a problem in locating Ms. Collins (see below), but that that situation did not affect the beneficiaries' money and that the disbursement would be made that month. Respondent also explained his concerns about potential tax problems that had not materialized. As noted earlier, the disbursement was not made at that time. Ms. Scappa contacted respondent in September 1993 to inform him that her sister, Donna Holmgren, had died. She spoke with him again in February or March 1994. Respondent indicated that the administration of the estate would be wrapped up in the next week. As mentioned above, the funds were disbursed in May 1994.

According to respondent, no one contacted him about the release of the funds during the years he held them. Had someone done so, he contended, he might either have contacted Mr. Shoner sooner about the corporate tax liability and disbursed the funds or asked Ms. Covert's opinion. Respondent explained that, if not for Ms. Holmgren's letter or another triggering event, he would have held the funds for what he deemed a sufficient period of time. In respondent's opinion, a sufficient period was six years, at which time the statute of limitations would run (absent allegations of fraud) and the funds could safely be disbursed to the beneficiaries. The six-year period would have terminated at the end of 1993.

An additional issue arose at the DEC hearing with regard to the 1991 death of Ms. Covert, the executrix of Ms. Paugh's estate. Respondent was unaware that she had died until the DEC investigator so informed him on April 21, 1993. His last contact with Ms. Covert had been in 1988. Respondent took no steps to locate a substitute for Ms. Covert after learning of her death. Respondent testified that, at the time that he learned that Ms. Covert had died, the administration of the estate had been finalized, except for the final distribution of the funds. Since there was no work left for an executor, respondent did not deem it necessary to arrange for one.

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Included in the property of the Paugh estate was a bank account passbook captioned "Ethel Paugh or Anita Holmgren Tax

Account for Olive Collins." (Anita Holmgren appears to have been Ethel Paugh's predeceased sister.) Ms. Collins had worked for Ms. Paugh and the account had apparently been established against possible tax obligations arising out of wages paid to Ms. Collins. The account was opened on April 27, 1982; the last transaction in the account was on January 28, 1983. Respondent had two concerns as to the account: where was Olive Collins and were the funds rightfully hers?

Respondent was worried about possible tax liability to the estate from the Olive Collins account. Ms. Covert had shared his concerns with the beneficiaries, each of whom had renounced any claim to the funds held in that account. By letter dated August 7, 1987, respondent informed the New Jersey Transfer Inheritance Tax Bureau of the existence of the account, requested that a tax waiver be issued for the account and stated that the funds would be held in an interest-bearing escrow account for Ms. Collins. (The record does not clearly reveal if the funds were moved from the account in which they had been deposited.) Respondent received no reply to his letter other than, ultimately, the issuance of a tax waiver.

Respondent did not deliver the account passbook to Ms. Collins. He testified that it had been his understanding that Ms. Collins was an illegal immigrant and that Ms. Covert had told him that she had left the country. He was, therefore, unaware of how to locate Ms. Collins.

Ms. Collins testified before the DEC. She explained that she had left the country for only approximately six months, from late



1985 to early 1986, and resided at the same address in Morristown for fourteen years. Ms. Collins contacted Ms. Covert in 1986 and discussed the bank account, of which Ms. Collins had been aware. Ms. Covert informed her that the money was being held, but that there was some paperwork involved in obtaining the money and that she, Ms. Covert, would get back to her. Ms. Collins last spoke to Ms. Covert in or about 1990. At an unspecified time thereafter, Donna Holmgren called Ms. Collins, informed her that respondent had the passbook and told her to contact him. Ms. Collins' husband thereafter contacted respondent in or about February 1993.

As a result of his concern that the estate might suffer tax consequences should the funds in question be turned over to Ms. Collins directly, respondent did not release the passbook until the Collins obtained an attorney. That attorney turned the funds over to the Collins in late 1993 or early 1994.

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Respondent was also charged with misconduct in his representation of C. Wesley Paugh (Ethel Paugh's son and Ms. Covert's brother) and his wife in connection with the sale of their house. When retained, respondent did not provide a writing to Mr. and Mrs. Paugh setting forth the basis of his fee. Apparently, a dispute later arose as to the amount of the fee.

Respondent testified that he had been unaware at the time he represented Mr. and Mrs. Paugh of the requirement that the basis of the fee be communicated in writing. Respondent contended, however, that the writing would not have been required in this case because

of his longstanding relationship with Mr. Paugh. Although the real estate transaction was the first matter in which he represented Mr. and Mrs. Paugh, respondent had previously provided informal representation to Mr. Paugh by advising him on a number of issues and had also represented members of the Paugh family. Further, respondent had informed Mr. and Mrs. Paugh that his fee would be between \$700 and \$900, if no problems arose. Respondent billed the Paughs \$960 plus expenses, for a total of \$1,064.83. This was apparently the first time that respondent had billed Mr. Paugh in the fifteen years of their relationship.

Although the record is unclear, it appears that some confusion arose due to a list respondent gave to Mr. and Mrs. Paugh of the actual time and expenses incurred in this matter, totaling \$2,347.83. Respondent testified that he provided the document only as a demonstration to the Paughs of what had been involved in the transaction and not as a bill. Respondent added that this issue was not raised by Mr. and/or Mrs. Paugh but, rather, by Donna Holmgren, who apparently alleged that the \$960 bill was a compromise reached by the parties.

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With regard to respondent's handling of the Paugh estate, the DEC found that he had forgotten about the remaining Paugh funds until he was prodded by Donna Holmgren's letter. Accordingly, the DEC found that he violated RPC 1.3 and RPC 1.4(a). With regard to the violation of RPC 1.15(b) in that matter, the DEC determined

that "there may have been sound tax reasons not to disburse the funds" and found no violation of the rule.

In connection with the Olive Collins passbook, the DEC was of the opinion that respondent had protected the tax liability of the estate. The decedent left no instruction on how the account should be handed and no evidence of compliance with the tax laws. Thus, the DEC found no violation in that aspect of this matter.

Similarly, the DEC found no violation of the rules in connection with the real estate closing. There was no evidence that the fee respondent charged deviated from that quoted by him to the clients or that they did not understand the basis of the fee. Respondent's only dereliction was his failure to memorialize the basis of the fee, which the DEC did not find to be a sufficient reason for discipline.

The complaint also charged respondent with a pattern of neglect, based on his conduct in this matter and the conduct that gave rise to his earlier private reprimand. The DEC did not find a violation on this regard. Although the DEC recommended public discipline, it noted that, had it not been for respondent's previous discipline for similar misconduct, a private reprimand (now an admonition) would have been sufficient discipline.

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After an independent, de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was

guilty of unethical conduct is fully supported by clear and convincing evidence.

Three separate instances of alleged misconduct are at issue in this matter. In the Olive Collins passbook case, the DEC found no misconduct based on respondent's legitimate concerns about potential tax liability by the estate.

The DEC presenter's argument was, apparently, that respondent did not take sufficient steps to locate Ms. Collins. According to respondent, he had been unaware that she was married and had been told that she left the country. Indeed, the timing of Ms. Collins' departure would have likely coincided with the time the passbook was located and respondent would have inquired as to her whereabouts, that is, late 1985 and early 1986. The presenter introduced into evidence the telephone directory for 1985, which listed Ms. Collins' husband's name and the directories for July 1990 through June 1993, which reflected listings for Ms. Collins. In 1985, respondent allegedly did not know that Ms. Collins had a husband. Further, the 1990-1993 listings showed that she was in the area, but the issue of how many years respondent should have looked for Ms. Collins and how extensive his search should have been is not that clear. There is also the fact that the Collins waited until 1993 to contact respondent, although aware that he had the passbook.

Like the DEC, the Board found no violation with regard to the Collins matter. Respondent reported the existence of the account to the New Jersey Transfer Inheritance Tax Bureau. It is difficult

to fathom why respondent took that step and what his motivation could have been, if his concerns were other than those he expressed. There are no allegations that respondent mishandled the funds while they were in his control.

Also at issue was respondent's handling of the real estate transaction on behalf of Mr. and Mrs. Paugh. In evidence are printouts of respondent's time that allegedly caused the difficulties in this regard. One such document, dated August 17, 1992, which is in evidence as Exhibit R-1, reflects a deduction for "Professional Courtesy" of \$1,700, leaving a balance due of \$1,064.83. This lends credence to respondent's version of the document's purpose, that is, to demonstrate the actual time and cost involved, rather than the final bill. A nearly identical document, dated August 12, 1992, and labeled "INTERIM STATEMENT", is attached to the formal complaint as attachment C. That copy of the document does not reflect the \$1,700 deduction. The two documents apparently caused a misunderstanding between respondent and the Paughs. If, indeed, respondent advised his clients that his fee would be \$900, absent problems, and he charged \$960, it would be unfair to impose discipline on that basis. The only issue, therefore, is respondent's admitted failure to put the basis of the fee in writing. Respondent contended that he was unaware of the requirement that he do so, but that, in any event, because of his longstanding relationship with Mr. Paugh, a writing was not needed. Of interest is the fact that neither Mr. nor Mrs. Paugh filed a grievance with the DEC or testified at the DEC hearing.

Although without the testimony of Mr. and/or Mrs. Paugh it is difficult to establish what their expectations and understandings were, the Board did determine that respondent was guilty of a technical violation of RPC 1.5(b).

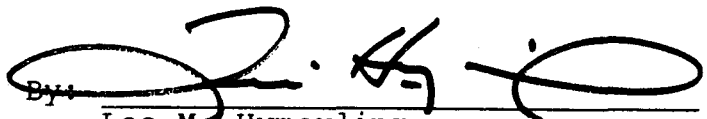
In connection with his handling of the Paugh estate, if respondent's concerns about potential tax liability were fabricated, his motivation to hold the funds is not clear. Respondent timely and properly distributed over \$185,000 in estate assets and held \$5,800. Respondent's testimony that he planned to hold the funds for six years until the statute of limitations ran, but that the ethics matter arose at that time, was a plausible explanation for his conduct. Nevertheless, it is undeniable that respondent was guilty of lack of diligence and failure to communicate with the beneficiaries. If respondent planned to hold the funds for six years and his testimony regarding his communication with Ms. Covert was truthful, that is, that he conveyed that information to the beneficiaries through her, then respondent unreasonably relied on Ms. Covert to communicate with the other beneficiaries for him. While she might indeed have conveyed to the beneficiaries the information she had received from respondent, it was still his responsibility to communicate with them on his own behalf, particularly since he, rather than the executrix, was making the actual distributions to the beneficiaries. Respondent should have sent periodic letters to the executrix updating her on the status of the estate. This he failed to do.

In sum, respondent violated RPC 1.3, RPC 1.4 and, technically, RPC 1.5. Although he has been previously disciplined, the Board deemed a reprimand to be sufficient discipline for the misconduct in this matter. See In re Dreier, 131 N.J. 157 (1993) (where an attorney was publicly reprimanded for lack of diligence in an estate matter and failure to cooperate with ethics authorities. The attorney had previously been publicly reprimanded on two occasions, one of which also arose from an estate matter). One member did not participate.

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

Dated: \_\_\_\_\_

10/2/95

By: 

Lee M. Hymerling  
Chair  
Disciplinary Review Board