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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-486

IN THE MATTER OF
EDWARD T. COSGROVE
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)(1)]

Decided: July 14, 1997

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

Pursuant to R. 1:20-4(f)(1), the District X Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by regular and certified mail. The certified mail return receipt card indicated delivery on September 26, 1996. The regular mail was not returned. Despite proper service of the complaint, respondent did not file an answer.

Respondent was admitted to the New Jersey bar in 1962. He has an extensive ethics history, beginning on November 23, 1981, when he received a private reprimand for neglecting a Florida estate matter. Six years later, on September 11, 1987, respondent was publicly reprimanded for failure to maintain the records required by R. 1:21-6 and failure to promptly disburse client funds.

Six months later, on March 8, 1988, respondent was temporarily suspended for failure to supply an accounting of the assets belonging to a client for whom he held a power-of-attorney; failure to appear at a demand audit; failure to notify the Office of Attorney Ethics ("OAE") as to the name of his intended proctor; and failure to certify to the OAE that he had corrected certain recordkeeping deficiencies found during a random audit of his attorney records. Lastly, on August 4, 1995, respondent was again temporarily suspended for failure to account for the assets of the Stevener estate, failure to produce all of the records requested for an OAE demand audit and failure to supply proctorship reports.

The formal complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to keep client adequately informed), RPC 1.15 (safekeeping property), RPC 5.5(a) (practicing law while on the ineligible list), RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and R. 1:20-1(d) and R. 1:21-6.

According to the facts alleged in the underlying complaint, on or about November 27, 1981, Gladys K. Stevener died, leaving a last will and testament. The will was probated at the Hudson County Surrogate's Office on or about January 8, 1982. Respondent qualified as executor and also acted as the attorney for the estate. For a period of thirteen years, from the date of his qualification as executor on January 8, 1982 until August 4, 1995, when he was temporarily suspended by the New Jersey Supreme Court for failure to account for the assets of the Stevener estate, respondent failed to take any meaningful or significant action to determine the assets of the estate, to invest and preserve those assets, to account to the beneficiaries for those assets, to file an inheritance tax return

with the State of New Jersey, to pay any taxes due, or to otherwise fulfill his duties as executor or attorney for the estate.

Lorraine J. Ohlhous, legatee under the Stevener will and the grievant in this matter, complained that she had not received any communication from respondent concerning the will, although she had made numerous phone calls to respondent and had sent him letters as well. When Ms. Ohlhous received a copy of the letter sent to respondent by the New Jersey Department of the Treasury, Division of Taxation, dated November 15, 1994, she attempted to contact respondent about the letter, but her calls went unanswered. Subsequently, the OAE contacted respondent by letter dated April 7, 1995 and by telephone on April 25, 1995. When no satisfactory response was forthcoming, the OAE sent a demand audit letter to respondent on June 13, 1995, requiring his attendance on June 29, 1995 and the production of his attorney book and records. After being adjourned at respondent's request, the audit was held on July 7, 1995. At that demand audit, respondent admitted the following: 1) he was unable to locate the Stevener file; 2) he estimated the value of the estate at approximately \$15,000; 3) he believed that he had not sent the \$3,000 bequest to grievant; and 4) he never completed the administration of the estate or filed the New Jersey inheritance tax return.

Other than a statement from the Palisades Savings Bank account for the period ending January 24, 1995, showing a balance of \$264.53 as of December 31, 1994, respondent produced no records pertaining to the estate bank accounts at issue in this matter.

Investigation by the OAE resulted in a reconstruction of that bank account record and also in a letter dated January 4, 1996 from the Department of the Treasury, Unclaimed Property Section, identifying assets of the Stevener estate. That letter listed three bank accounts in the total amount

of \$7,213.20. Those assets, along with ten shares of stock and a dividend check for \$14.40, escheated to the State of New Jersey as unclaimed property as a result of respondent's inaction.

The first count of the complaint charged respondent with abandonment of his legal and fiduciary obligations to the Stevener estate and its beneficiaries; gross neglect and a pattern of neglect; incompetent representation; and failure to communicate.

The second count of the complaint charged respondent with abandonment of recordkeeping obligations. At the demand audit of July 7, 1995, respondent was required to produce all books and records to be maintained in accordance with R. 1:21-6. However, with the exception of a single trust account bank statement for September 1994, showing an ending balance of \$4,238.95, respondent failed to produce any trust or business account records.

According to the complaint, respondent made the following admissions during the audit:

He was unable to find more current bank statements between October 1994 and June 1995 because the post office had stopped forwarding them to his prior office. He had not left a forwarding address with the post office. He never called the bank to inquire about the missing statements. He was familiar with the existence of R. 1:21-6, but did not apply the rule to his recordkeeping practices "with due diligence." He did not maintain separate trust receipts and disbursement books, other than his trust account register. He did not enter a balance in the check books as he wrote checks, although he completed a balance when he wanted to issue a trust check. Although he reconciled the trust account bank statements, he did not reconcile them to the total trust funds held for his clients, as required by the rule. He estimated the balance in his trust account on the demand date to be approximately \$4,500, including his accumulated fees; however, he was unable to determine to

whom those funds belonged, although he believed that the funds related to six client matters. Finally, he could name only three possible clients and was unable to locate files for those clients.

The third count alleged that respondent was ineligible to practice law in the State of New Jersey on December 12, 1994 by Order of the New Jersey Supreme Court. Respondent had been given notice that he was unable to practice law by the Supreme Court's Order of December 12, 1994, as well as the OAE's letter dated March 14, 1995. Nevertheless, during the period of his ineligibility respondent continued to hold himself out as an attorney of the State of New Jersey and to practice law. Ultimately, by letter dated April 24, 1995, respondent paid his annual assessment to the Client Protection Fund, whereupon he was removed from the ineligible list.

According to the complaint, respondent improperly practiced law at a time when he was ineligible, in violation of R. 1:20-1(d) and RPC 5.5(a).

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct. The only exception is the alleged violation of RPC 8.4(b) (commission of criminal conduct) in the first count.

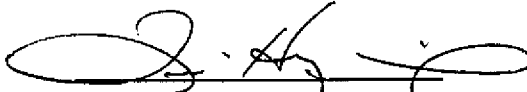
This leaves only the issue of appropriate discipline. Similar misconduct has resulted in a two-year suspension. See In re Restaino, 142 N.J. 615 (1995) (where attorney was given a two-year suspension for grossly neglecting an estate by failing to file a tax return for eight years, failing to keep proper accounting records for the estate and failing to cooperate with ethics authorities); In re

Tysowski, 135 N.J. 344 (1994) (where attorney was given a two-year suspension for negligent misappropriation of almost \$24,000 and gross neglect of eleven client matters).

In light of the foregoing, the Board unanimously determined that a two-year suspension is the appropriate discipline. In addition, prior to reinstatement, respondent must satisfy the OAE that he has made every reasonable effort to account for the funds in Stevener. Two members did not participate.

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

Dated: 7/14/97


LEE M. HYMERLING
Chair
Disciplinary Review Board