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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-323
District Docket No. XIV-06-493E

IN THE MATTER OF	
ALEX KATZ	
AN ATTORNEY AT LAW	

Decision

Argued: January 18, 2007

Decided: March 19, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper service.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's two-year suspension in Pennsylvania. Respondent was suspended for violating (1) a number of

Pennsylvania Rules of Disciplinary Enforcement when he continued to practice law after he had been transferred to inactive status for failing to comply with Pennsylvania's continuing legal education requirements and (2) a number of Rules of Professional Conduct when, after he was transferred to inactive status, he undertook the representation of the executor of an estate and grossly mishandled the matter.

The OAE recommends the imposition of a two-year suspension. For the reasons set forth below, we determine that a three-month prospective suspension is the appropriate discipline for the totality of respondent's violations.

Respondent, a Pennsylvania resident, was admitted to the New Jersey and Pennsylvania bars in 1992. According to Pennsylvania's disciplinary authorities, at least as of August 12, 2005, respondent no longer maintained a law office in Pennsylvania.

Presently, respondent practices out of the Moorestown, New Jersey office of John Penberthy. The OAE's attorney registration system identifies respondent as a part-time partner in this two-person law firm.

Respondent has an unblemished disciplinary history in New Jersey. From September 26, 2005 to March 16, 2006, however, he

was on the Supreme Court list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Respondent's disciplinary history in Pennsylvania is limited to the matter underlying this motion for reciprocal discipline.

The facts before us are set forth in a joint petition submitted to the Disciplinary Board of the Supreme Court of Pennsylvania (Pennsylvania Disciplinary Board) on October 31, 2005, by the Pennsylvania Office of Disciplinary Counsel and counsel for respondent. The joint petition incorporated the Office of Disciplinary Counsel's August 12, 2005 petition for discipline, which set forth the pertinent facts underlying many enumerated violations of the Pennsylvania Rules of Disciplinary Enforcement and the Rules of Professional Conduct. In the joint petition, respondent agreed that he had violated the following Rules of Professional Conduct: RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and (b) (failure to communicate with the client), RPC 1.15(a) (failure to safeguard trust funds), RPC 1.16(a)(1) (representation of client in violation of the Rules of Professional Conduct, RPC 1.16(d) (upon termination of representation, failure to protect client's interests), RPC 5.5(b) (unauthorized practice of law),

RPC 7.1(a) (false or misleading communications about the lawyer), RPC 7.5(a) (false or misleading firm name and letterhead), RPC 8.4(a) (violation of Rules of Professional Conduct), RPC 8.4(b) (commission of criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent agreed to the imposition of a two-year suspension in Pennsylvania.

On November 10, 2005, the Pennsylvania Disciplinary Board approved the joint petition and recommended that it be granted by the Supreme Court of Pennsylvania (the Pennsylvania Court). On January 5, 2006, the Pennsylvania Court entered an order imposing a two-year suspension on respondent. According to the OAE's brief, respondent did not advise the OAE of the suspension.

RESPONDENT'S INELIGIBILITY TO PRACTICE LAW IN PENNSYLVANIA

On March 12, 1998, Respondent registered a Pennsylvania Limited Liability Partnership with the Pennsylvania Department of State for an entity known as "Katz & Miele, LLP." The

"Miele" in the LLC was Joseph V. Miele, Jr., who had been ineligible to practice law in Pennsylvania since 1994.

After respondent registered the partnership, he practiced law under the name of Katz & Miele, LLP. He never practiced law in association with Miele.

On October 4, 2002, the Pennsylvania Continuing Legal Education Board (PACLEB) advised respondent that he had not completed his Continuing Legal Education (CLE) requirements for the period concluding December 31, 2002. Between December 31, 2002 and May 27, 2003, PACLEB sent respondent three more notices, reminding him of his non-compliance, imposing fines, and warning that his name would be sent to the Pennsylvania Court with the recommendation that he and other non-compliant attorneys be involuntarily inactivated. Respondent did not act on the notices. Accordingly, on August 4, 2003, the Pennsylvania Court entered an order, effective September 3, 2003, transferring respondent to inactive status for failure to comply with his CLE requirements.

The Disciplinary Board notified respondent of the order by a letter sent via certified mail, which he received on August 12, 2003. The Disciplinary Board also enclosed copies of

regulations governing attorneys ineligible to practice and forms for compliance therewith.

According to the joint petition, respondent failed to comply with the requirements of Rule 217, Pa.R.D.E., with respect to, among other things, notice to clients, courts and third parties, certification of compliance to the Disciplinary Board, and return of "indicia of admission." Accordingly, by preliminary annual CLE report dated October 3, 2004, PACLEB advised respondent that he had been placed on "INACTIVE" status for the current compliance year, presumably 2004.

THE HEATH ESTATE MATTER

On March 24, 2004, Lois E. Heath died. Her assets included a Florida condominium, which she had bequeathed to Edward Conway, and a Pennsylvania residence, securities and other assets totaling approximately $1,280,504.00, which she had bequeathed in trust to the children of Robert Wiedeman, who was the executor of the estate. The residue was left to Wiedeman.

In April 2004, Wiedeman met with respondent to discuss respondent's legal representation in the administration of the estate. Respondent did not advise Wiedeman of his ineligibility to practice law due to his inactive status. Instead, he agreed

to probate the will, establish trusts for Wiedeman's children, coordinate the transfer of the Florida property, file all income, estate and inheritance tax returns, and handle any other necessary estate matters.

Respondent explained to Wiedeman that, although his fee for representing an estate was ordinarily six percent of the estate's value, he would charge only five percent, due to his prior representation of Heath. Respondent provided Wiedeman with a fee agreement, providing for the payment of a fee equal to five percent of the estate's "net assets," the tendering of invoices for one-third of the fee after identification of the assets, liabilities and expenses of the estate; one-third after preparing drafts of the estate and inheritance tax returns; and one-third upon finalizing the administration of the estate.

At some point, presumably when respondent first undertook the representation, Wiedeman informed him that the transfer of the Florida condominium was a priority, as maintenance fees and taxes continued to be charged to the estate. Respondent stated that he would secure the services of a Florida attorney to undertake the transfer.

On April 2, 2004, respondent filed a petition for probate. Letters testamentary were granted Wiedeman, who opened an estate

checking account, garnered the assets of the estate, and paid estate obligations. He promptly provided respondent with all documents relating to the estate's assets and liabilities.

Respondent's derelictions encompassed three aspects of the representation: the preparation of the estate, inheritance, and income tax returns, Wiedeman's payment of his fee, and the transfer of the Florida property. For ease of reference, we discuss these matters seriatim.

Preparation of Estate, Inheritance, and Income Tax Returns

On June 11, 2004, at respondent's request, Wiedeman wrote a $60,000 check in payment of the Pennsylvania inheritance tax. Respondent forwarded the check to the Pennsylvania Department of Revenue on July 13, 2004.

On or about September 8, 2004, Respondent provided to Wiedeman an inheritance tax return, a Pennsylvania estate tax return, and a federal estate tax return for his signature and payment of estate taxes. On September 13, 2004, respondent sent a letter over Wiedeman's name "c/o Alex Katz, Esquire" to the county register of wills, which included his calculation of the Pennsylvania estate tax. Respondent also forwarded the federal

estate tax return, the Pennsylvania inheritance tax return and a $1091 estate check to cover the Pennsylvania estate tax.

The inheritance tax return contained the following errors:

a. listed the Florida real estate as a taxable asset;

b. failed to include as taxable assets IRAs and bonds valued at $303,281.00;

c. failed to include the total value of other assets;

d. showed gross assets of $952,193.00 and net assets of $855,714.00;

e. claimed counsel fees in the amount of $65,867.00 (which is in excess of 5% of the net assets and of the gross assets); and

f. showed tax due of $45,241.00, which resulted in an overpayment of $16,913.00, including credit for the discount.

Based upon respondent's figures, the net assets of the estate, before deduction for counsel fees, totaled $921,581.00. Accordingly, his fee would have been $46,079.00.

The federal estate tax return included a miscalculation of the credit for state death taxes and showed that the taxes due were $53,361.00, which Wiedeman paid. Respondent dated the return September 23, 2004, and filed it on or after that date. Thereafter, respondent failed to communicate with Wiedeman until late October 2004, when he informed Wiedeman that he was working

on the condominium transfer and offered excuses as to why the transfer had not been completed.

By notice dated November 9, 2004, the Pennsylvania Department of Revenue asked respondent to explain the basis for his failure to include the IRAs as taxable assets and information concerning savings bonds. Respondent failed to reply to that inquiry.

By notice dated December 27, 2004, the IRS advised Wiedeman that, due to an error in respondent's computation of the credit for state death taxes (and failure to credit the $53,361.00 payment), he had underpaid the federal estate tax. As a result, the estate owed $64,699.05, including penalty and interest. Wiedeman called respondent to discuss the matter, but respondent failed to accept or return his calls.

On March 14, 2005, Wiedeman filed an application for a refund of the inheritance tax overpayment with the register of wills. That same day, the Pennsylvania Department of Revenue issued an inheritance tax notice of appraisement, in which a credit of $9,999.12 was noted, rather than the $16,913.00 claimed by respondent. The adjustment was due to a net increase in estate assets, once respondent's erroneous inclusion of the Florida property and exclusion of IRAs and bonds was corrected.

On or about April 1, 2005, the Department of Revenue sent respondent a $9,999.12 check, payable to the estate. Respondent did not tell Wiedeman about the refund, and he did not remit the check to him.

Respondent never prepared the decedent's final year income tax returns and 2004 estate and trust income tax returns.

The Transfer of the Florida Property

Despite Wiedeman's emphasis on the urgency of transferring the Florida condominium, respondent long delayed the retention of a Florida attorney. From May through December 2004, Wiedeman called respondent at least monthly and inquired about the status of the transfer of the condominium. On most occasions, respondent was unavailable. Wiedeman left voicemail messages for him. On the few occasions when respondent returned Wiedeman's calls, he gave various excuses as to why the condominium had not been transferred.

On August 12, 2004, respondent finally contacted Florida attorney Adam Bankier, of the law firm of Elk Bankier & Palmer ("the Bankier firm"), to request that he start an ancillary probate proceeding in Florida to transfer the condominium. Bankier agreed to handle the matter for a $3000 fee, plus costs,

and requested a $2000 retainer. Respondent failed to send the retainer.

On October 28, 2004, respondent sent the Bankier firm documents relating to the estate, including a letter from a real estate broker stating the value of the condominium. However, respondent did not send the retainer or the appraisal.

In a November 2, 2004 telephone message, the Bankier firm inquired whether the retainer letter should be forwarded to respondent or to his client. Respondent failed to answer the inquiry or subsequent messages left by the Bankier firm on several occasions, in December 2004 and January 2005.

On January 13, 2005, Wiedeman wrote to respondent and stated that he had hired his own Florida attorney to transfer the condominium. Wiedeman also expressed his concern about respondent's lack of communication and abandonment of the representation and the underpayment notice from the IRA, and requested that respondent return his calls and reimburse him for the estate tax underpayment and interest and refund of the overpayment of inheritance tax.

In a letter dated January 21, 2005, respondent assured Wiedeman that he would complete the estate, asked Wiedeman to send him a copy of the IRS notice, and stated that he had a call

scheduled with Bankier, to whom he had complained about the delay in the transfer. According to the petition, respondent's letter was misleading, in that the reason for the delay in transferring the property was his failure to forward the retainer and costs and the appraisal of the property to the Bankier firm.

In a certified letter dated January 24, 2005, received by respondent on February 12, Wiedeman stated that he had learned that, when he retained respondent, respondent was ineligible to practice law. Wiedeman discharged respondent and demanded that he refund the fee and return Wiedeman's documents by February 8, 2005. Respondent did not reply to the letter.

In a letter dated January 27, 2005, the Pennsylvania Office of Disciplinary Counsel informed respondent that it had received Wiedeman's complaint, which alleged that respondent was engaging in the unauthorized practice of law.

After reaching respondent by telephone on January 31, 2005, Bankier sent him a fee agreement dated February 1, 2005, advised him of anticipated costs, and requested a $2000 retainer toward the $3000 fee, as well as documentation regarding the estate of the decedent's predeceased husband. Respondent did not send the retainer, but he did return the executed agreement.

By letter dated February 1, 2005, the Bankier firm forwarded to respondent documents for Wiedeman's signature. On February 10, 2005, respondent called Wiedeman and stated that he was completing the Florida property transfer. Wiedeman told respondent that he had retained another attorney to handle the matter. Respondent advised Wiedeman to discharge the attorney, stating that he would pay the Bankier firm's attorney's fees and fax Wiedeman the documents.

The next day, respondent gave the documents to Wiedeman for his signature. Wiedeman signed and returned them to the Bankier firm. When Wiedeman discovered that the work in Florida had not been completed because the Bankier firm had not been paid, he called respondent, who promised to send a check on February 18. On February 20, 2005, respondent finally sent Bankier a $2000 check, drawn on his business account.

On March 18, 2005, the Circuit Court of Broward County, Florida, issued an order admitting the will to probate and appointing a personal representative. On that same day, Wiedeman forwarded to respondent a $500 bill from his Florida attorney, as well as a $310 bill from the accountant who completed the estate's tax returns. Wiedeman requested that respondent pay those bills. Respondent complied.

The Payment of Respondent's Fee

On June 11, 2004, at respondent's request, Wiedeman issued respondent a $22,000 check, on account of his fee. On several occasions during the summer of 2004, respondent made appointments to meet with Wiedeman, but respondent either failed to appear or he cancelled the appointments on short notice.

In July or August 2004, respondent provided to Wiedeman a computer printout of estate assets and fees. Wiedeman reviewed the printout, ascertained that respondent had double-counted an asset, and so advised respondent. Thereafter, at Wiedeman's request and after failing to appear as scheduled on at least one occasion, respondent met with him at Wachovia Bank, where a bank representative explained the error. Respondent stated to Wiedeman that his fee would be reduced as a result of this correction of the value of the gross estate.

On September 2, 2004, at respondent's request and upon his representation that the fee agreement provided for completion of the payment, Wiedeman issued a check in the amount of $43,867.19, payable to respondent, for what he claimed was the remainder of his fee. Respondent deposited each of the checks into First Union National Bank, account no. 20142366063, captioned "Katz & Miele, LLP," which was not an IOLTA account.

Indeed, respondent failed to maintain the fees in escrow, pending completion of his services.

According to the petition, respondent's receipt of the fees paid by Wiedeman constituted fraud because respondent was ineligible to practice law at the time.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). As to subparagraph (E), however, respondent's misconduct

"warrants substantially different discipline," as the violations that he committed in Pennsylvania cannot support a two-year suspension in New Jersey.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In this case, the petition set forth facts, followed by a laundry list of violations, but did not identify which facts supported which violations. Therefore, based on the facts set forth in the joint petition, we make our own conclusions concerning which violations potentially apply and whether respondent's conduct resulted in the violations.

As to respondent's registration of the Katz & Miele limited liability partnership with the Pennsylvania Department of State, we find that the registration itself was not a clear violation of any RPC because respondent could have fully intended such a

partnership at the time of the registration. Moreover, although Miele was ineligible to practice law when the partnership was registered, the petition does not state that respondent was, or even should have been, aware of Miele's ineligibility. We, therefore, find no impropriety in this regard.

After the firm was registered, however, and actually operated as Katz & Miele, respondent violated a number of RPCs because Miele never practiced law in the firm. RPC 7.1(a) prohibits an attorney from making "false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement." RPC 7.5(a), in turn, proscribes the "use of a firm name, letterhead, or other professional designation that violates RPC 7.1." As the parties to the Pennsylvania proceeding agreed, we, too, conclude that, by practicing under the firm name of Katz & Miele, LLP, respondent falsely represented that he and Miele were members of a limited liability partnership for the practice of law, a violation of RPC 7.1(a). He also violated RPC 7.5(a) because he used a firm name (Katz & Miele) (and, in all likelihood, a firm letterhead)

that violated RPC 7.1(a) because Miele did not practice in the firm. [1]

Respondent committed additional ethics infractions after he was transferred to inactive status. First, he engaged in the unauthorized practice of law, a violation of former RPC 5.5(a) and current RPC 5.5(a)(1), when he undertook the representation of Wiedeman as executor of the Heath estate.[2] These rules prohibit an attorney from practicing law in a jurisdiction where doing so violates the jurisdiction's regulation of the legal profession. The equivalent rule is identified in the Pennsylvania petition as RPC 5.5(b). Even after Wiedeman confronted respondent about his ineligibility, and Pennsylvania

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[1] Although we conclude, as agreed in Pennsylvania, that respondent violated RPC 7.1(a) and RPC 7.5(a) by maintaining a law practice designated as Katz & Miele, the more applicable rules would have been RPC 7.5(c) and (d). RPC 7.5(c) specifically prohibits a firm name from containing "the name of any person not actively associated with the firm as an attorney, other than that of a person or persons who have ceased to be associated with the *firm through death or retirement*." RPC 7.5(d) permits attorneys to "state or imply that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services."

[2] Pennsylvania RPC 5.5(b)(1) and (2), which became effective in 2005, prohibit attorneys who are not admitted to practice in the Commonwealth from establishing an office there and holding out to the public that they are admitted to practice.

disciplinary authorities informed respondent of Wiedeman's grievance alleging that respondent was unauthorized to practice law, respondent continued to represent Wiedeman.

As a result of respondent's violations of Pennsylvania RPC 5.5(b) and New Jersey RPC 5.5(a), he also violated RPC 1.16(a)(1), which prohibits an attorney from undertaking a representation if the representation will result in a violation of the Rules and, when a representation is already in place, requires an attorney to withdraw therefrom. Respondent also violated RPC 8.4(a), which prohibits an attorney from violating the Rules of Professional Conduct. In addition, he violated RPC 8.4(c), by his silence, when he failed to inform Wiedeman that he was ineligible to practice law and, therefore, could not represent him in the administration of the Heath estate. See Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) (sometimes "silence can be no less a misrepresentation than words").

With respect to respondent's actual handling of the estate, we find that he exhibited gross neglect (RPC 1.1(a)) and lacked diligence (RPC 1.3) in multiple ways. First, when Wiedeman retained respondent in April 2004, he told respondent that the transfer of the Florida property was a priority because, in the

meantime, the estate was being assessed taxes and fees. Yet, due to respondent's inaction and neglect, the transfer did not take place until at least March 2005, when a Florida court was finally in a position to enter an order admitting the will to probate and appointing a personal representative for the estate. Presumably, respondent's inaction resulted in the estate's payment of taxes and fees for nearly a year after Heath's death, on a property that did not need to be put up for sale, but merely transferred to a beneficiary named in Heath's will.

Respondent, who promised Wiedeman when he was retained that he would hire a Florida attorney to transfer the condominium to the beneficiary, never contacted a Florida law firm until August 2004, four months later. At that time, the Florida attorney, Adam Bankier, told respondent that he required a $2000 retainer against a $3000 fee.

Although respondent never sent a retainer to Bankier, he told Wiedeman, in late October 2004, that he was working on the transfer. On October 28th of that year, respondent sent certain documents to the Bankier firm, but not the retainer. He also failed to obtain the appraisal supporting a real estate broker's valuation of the property.

From November 2004 through January 2005, the Bankier firm left several messages for respondent, asking whether the retainer agreement should be sent to him or Wiedeman. Respondent ignored the calls. In January 2005, an exasperated Wiedeman finally wrote to respondent and told him, among other things, that he had hired his own Florida attorney to carry out the transfer of the property. Undaunted, and in disregard of Wiedeman's termination of the representation, respondent wrote to him, misrepresenting that the delay was the fault of the Bankier firm, and stating that he "had advised Mr. Bankier of his concern that the transfer was not completed." Yet, the true reason for the delay in the transfer was respondent's failure to forward the retainer and the appraisal to Bankier.

Finally, on February 1, 2005, Bankier sent a fee agreement to respondent and again requested a $2000 retainer. Respondent returned the agreement but did not send the money. Respondent convinced Wiedeman to discharge the new attorney and promised that he would pay the fees incurred in the Florida transfer. Mid-month, respondent sent documents to Wiedeman for his signature, which Wiedeman signed and returned to the Bankier firm. Finally, on February 20, 2005, respondent paid $2000 from his business account to the Bankier firm.

Respondent also displayed gross neglect and lacked diligence in his handling of the estate insofar as the calculation and payment of taxes were concerned. In June 2004, respondent instructed Wiedeman to write a $60,000 check, presumably in payment of the Pennsylvania inheritance tax. One month later, respondent sent the check to the department.

In September 2004, respondent presented Wiedeman with a completed inheritance tax return, as well as estate tax returns for Pennsylvania and the United States. Respondent prepared the Pennsylvania inheritance tax return in a grossly negligent manner, in that it erroneously identified the Florida property as a taxable asset; failed to include more than $300,000 of taxable IRAs and bonds; failed to include the value of other assets; and claimed counsel fees in excess of the agreed amount. Moreover, based on respondent's omissions, the return reflected a $16,913 overpayment when, in fact, Wiedeman had overpaid only $9999. Thus, the department sent respondent a check, payable to the estate, for the lesser amount.

With respect to the federal estate tax return, based on respondent's miscalculation, Wiedeman paid $53,361 in tax due. However, the IRS advised Wiedeman that, due to respondent's error in the computation of the credit for state death taxes,

Wiedeman had underpaid the federal estate tax and, accordingly owed $64,699, including penalty and interest.[3]

Finally, respondent grossly neglected the estate and lacked diligence in its handling when he failed to prepare 2004 final income tax returns for the decedent, as well as 2004 estate and trust income tax returns.

With respect to respondent's fee, the agreement provided that he would receive five percent of the net assets of the estate. The fee was to be paid in three equal installments: after the assets, liabilities and expenses of the estate had been identified, after the draft of the estate and inheritance tax returns had been completed, and after respondent had finalized the administration of the estate. Respondent was retained in April 2004. Wiedeman paid respondent $22,000 toward the fee on June 11.

In September 2004, respondent asked Wiedeman to pay the balance of his fee, or nearly $44,000. Wiedeman complied. At the time, however, respondent had not completed the administration of the estate. In fact, he never finalized it. Moreover, respondent failed to deposit the unearned fee into an

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[3] It is unclear whether the estate owed $53,361 plus the $64,699 or whether the estate owed a total of $64,699.

IOLTA trust account, as required. Instead, he apparently deposited the check into the firm's business account.[4] Thus, respondent violated RPC 1.15(a) (failure to safeguard trust funds).

Moreover, the $66,000 fee did not represent five percent of the net assets of the estate. Indeed, even based upon respondent's *erroneous* calculation of the estate's assets on the tax returns, he still charged more than five percent. The incorrect Pennsylvania inheritance tax return reflected $855,714 in net assets. Five percent of this figure is $42,785.70. Although the petition does not state what the correct amount of net assets actually totaled, it is clear that, based upon respondent's own error, he overcharged the estate by about $23,000. The evidence does not establish, however, that the amount of the fee was based upon anything more than respondent's miscalculation. Thus, we are unable to find that respondent intentionally charged an excessive fee, which would have been a violation of RPC 1.5(a).

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[4] The petition does not identify the account into which the check was deposited, other than to say that it was in the name of respondent's firm and that it was not an IOLTA account.

Finally, in seeking payment of the final third of the bill, whatever the amount, respondent violated RPC 8.4(c) when he told Wiedeman that the final payment was due. In fact, the final third of the payment was never due because respondent never finalized the administration of the estate.

In addition to respondent's unethical representation of the estate, he failed to communicate with Wiedeman throughout the representation. In violation of RPC 1.4(a), respondent ignored Wiedeman's telephone calls seeking information about the tax problems that arose as a result of respondent's negligence in handling the estate. Respondent ignored Wiedeman's attempts to discuss the underpayment notice from the IRS, and the whereabouts of the refund of the overpayment of the Pennsylvania inheritance tax. Respondent even failed to reply to Wiedeman's letter terminating his services.

For seven months, respondent ignored all but a few of Wiedeman's phone calls about the status of the Florida transfer. On the few occasions when respondent returned Wiedeman's calls, he lied to him about the status of the transfer, including that he was following through on the matter. These misrepresentations violated not only RPC 8.4(c), but also former RPC 1.4(b), in that they prevented Wiedeman from making an informed decision

regarding the representation. Respondent also failed to appear for, or canceled on short notice, several appointments with his client.

Finally, although respondent consented to having violated RPC 8.4(b) (*commission of a criminal act that reflects adversely on lawyer's honesty, trustworthiness or fitness as a lawyer in other respects*), there is no evidence that he committed a criminal act. Thus, despite respondent's consent to the charge, we are unable to find a violation of RPC 8.4(b).

We now turn to the assessment of the suitable discipline for respondent's violations. In Pennsylvania, practicing law while inactive automatically results in a suspension of one year and one day.[5] See, e.g., In re Coleman, 185 N.J. 280 (2005) (attorney who practiced law in Pennsylvania while inactive for nine years was suspended for one year and one day in Pennsylvania). Thus, the year-and-a-day suspension was the starting point in Pennsylvania's assessment of the discipline to be imposed on respondent.

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[5] The extra day requires the suspended attorney to file for reinstatement. At the reinstatement proceeding, the attorney must prove fitness to practice law as a condition to restoration.

In New Jersey, however, practicing law while ineligible typically results in an admonition, if the attorney is unaware of the ineligibility. See, e.g., In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004), and In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (admonitions for attorneys who practiced law while ineligible for, respectively, nineteen and nine months; neither attorney was aware of his ineligibility).

A reprimand is usually imposed when the attorney is aware of the ineligibility and practices law, engages in other sorts of unethical conduct, and has a disciplinary history. See, e.g., In re Perrella, 179 N.J. 499 (2004) (on motion for reciprocal discipline, attorney reprimanded for advising his Pennsylvania client that he was on the inactive list but practicing law anyway; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); In re Ellis, 164 N.J. 493 (2000) (reprimand for attorney who, one month after being reinstated from an earlier period of ineligibility, was notified of his 1999 annual assessment obligation, failed to make timely payment, was again declared ineligible to practice law, and continued to perform legal work

for two clients; he had received a prior reprimand for unrelated violations); In re Namias, 157 N.J. 15 (1999) (reprimand for attorney who lacked diligence, failed to communicate with a client, and practiced law while ineligible); In re Armorer, 153 N.J. 358 (1998) (reprimand for attorney who exhibited gross neglect, failed to communicate with a client, failed to maintain a bona fide office, and practiced law while ineligible); and In re Maiorello, 140 N.J. 320 (1995) (reprimand for attorney who practiced law while ineligible, failed to maintain proper trust and business account records in nine matters, exhibited a pattern of neglect, lacked diligence, and failed to communicate with clients in six of the matters).

Here, respondent was aware of his inactive status and practiced law nevertheless. Even after Pennsylvania disciplinary authorities notified him of Wiedeman's grievance, alleging that he was engaging in the unauthorized practice of law, respondent continued to work on the estate matter. Therefore, in this state, a reprimand is the starting point for respondent's practicing law while inactive.

Similarly, a reprimand is the appropriate discipline for an attorney who grossly neglects and lacks diligence in the handling of a matter, fails to communicate with the client, and

misrepresents the status of the case to the client. See, e.g., In re Lutz, 188 N.J. 366 (2006) (reprimand for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation to the client that the legal action was pending, even though the complaint had been dismissed), and In re Bildner, 149 N.J. 393 (1997) (attorney with no ethics history reprimanded for violations of RPC 1.3, RPC 1.4(a), and RPC 8.4(c) for failure to inform his clients that, as a result of his failure to appear at an arbitration proceeding, their complaint had been dismissed twice - with prejudice the second time).

In addition to the violations just mentioned, however, we must consider respondent's use of a misleading letterhead, which misrepresented that he practiced in a partnership with Miele; respondent's failure to deposit the unearned Wiedeman fee in an IOLTA trust account; and his failure to turn over to Wiedeman the $9999 refund check from the Pennsylvania Department of Revenue.

The use of a misleading letterhead ordinarily results in an admonition. See, e.g., In the Matter of Jean Larosiliere, DRB 02-128 (March 20, 2003) (admonition for allowing the name of a law school graduate to appear on the letterhead in a manner

indicating that the individual was a licensed attorney and allowing a California lawyer not admitted in New Jersey to sign letters on the firm's letterhead with the designation "Esq." after the attorney's name; Larosiliere also lacked diligence and failed to communicate with a client), and In the Matter of Morrison, Mahoney & Miller, LLP, DRB 01-364 (December 5, 2001) (admonition for using letterhead that did not identify attorneys licensed in New Jersey, did not indicate the jurisdictional limitations on attorneys not admitted in New Jersey, and did not indicate "one or more of its principally responsible attorneys" licensed in New Jersey; the firm also failed to maintain an attorney trust and business account in New Jersey).

An admonition also is the ordinary level of discipline for failure to safeguard trust funds. See, e.g., In the Matter of Patrick DiMartini, DRB 04-440 (February 22, 2005) (admonition for failure to insure that an $8,500 real estate deposit given by the clients was promptly deposited in the trust account soon after its delivery; the check was taken from the attorney's office and illegally cashed by a third person).

Finally, an aggravating factor in this case is respondent's failure to report his Pennsylvania suspension to New Jersey disciplinary authorities, as required by R. 1:20-14(a)(1).

Respondent's conduct, considered altogether (reprimand for practicing while inactive; reprimand for gross neglect, lack of diligence, and misrepresentation; admonition for use of a misleading letterhead; admonition for failure to safeguard trust funds; and one aggravating factor) should earn him a short-term suspension. See, e.g., In re Lawrence, 170 N.J. 598 (2002) (three-month suspension for attorney who, although ineligible in New Jersey and not admitted in New York, accepted a retainer to handle a case in New York, failed to communicate with the client, lacked diligence in handling the matter, charged an unreasonable fee, misrepresented the amount of the legal work performed in the case, used a misleading letterhead in New Jersey, and failed to cooperate with disciplinary authorities; the matter proceeded on a default basis). Like this respondent, Lawrence practiced law while ineligible, used a misleading letterhead, made misrepresentations, failed to communicate with her client, and lacked diligence in handling the client's case. Although Lawrence also failed to cooperate with ethics authorities and allowed her disciplinary case to proceed on a default basis, respondent failed to safeguard trust funds and failed to report his Pennsylvania discipline to the OAE. On

balance, the conduct of both respondents is similar in nature and severity.

We find that the above case law is more applicable to this matter than the cases cited by the OAE in support of its request that respondent receive a two-year suspension. Accordingly, we determine to impose a three-month prospective suspension on respondent.

Members Baugh and Lolla did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy
Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alex Katz
Docket No. DRB 06-323

Argued: January 18, 2007

Decided: March 19, 2007

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		7				2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel