SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-028

IN THE MATTER OF

LOUIS F. WILDSTEIN

AN ATTORNEY AT LAW

Decision

Argued: April 13, 2000

Decided: October 9, 2000

Mark P. Denbeaux appeared on behalf of the District VA Ethics Committee.

Justin P. Walder appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District VA Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1978. He maintains an office for the practice of law in Newark, New Jersey.

Respondent has two prior disciplinary matters. In 1988, he was privately reprimanded for failure to keep a client reasonably informed about the status of a personal injury lawsuit. In the Matter of Louis F. Wildstein, Docket No. DRB 86-267 (June 23, 1988). In 1994, he was reprimanded for gross neglect, lack of diligence and failure to communicate with a client. In re Wildstein, 138 N.J. 48 (1994).

This matter involves respondent's conduct with regard to two estates, the Doris Mariano estate and the Rose Fingerman estate. The complaint alleges violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to keep a client reasonably informed of the status of a matter and to promptly comply with reasonable requests for information); RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation); RPC 1.7(a), (b) and (c) (conflict of interest); RPC 1.8(a) (conflict of interest/prohibited transaction); RPC 1.8(c) (preparation of an instrument giving the attorney a substantial testamentary gift); RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Doris Mariano Estate Matter

Doris Mariano was a friend and client of respondent's father, who was also an

attorney.[1] On November 5, 1979, respondent's father drafted a will for Doris, leaving $1.00 to her daughter and the remainder of her estate, in trust, to her son, Anthony Mariano, age nineteen. The trustee was given the power to take possession of and administer all of Doris's personal and real property and to use the principal and income for Anthony's support. The trustee, in his sole discretion, also had authority to withhold support. With regard to the ultimate distribution of the estate, the will stated that "upon my son attaining the age of thirty-five, my said Trustee hereinafter named shall distribute the corpus or principal, or balance of the trust, together with all accruals, to my son, ANTHONY GERARD MARIANO."

Respondent's father was appointed executor of her will and trustee of the trust. Respondent was named alternate executor and trustee.

Doris died on February 17, 1984. Her will was admitted to probate on March 21, 1984. Although respondent's father was still alive and practicing law at that time, respondent was appointed executor of Doris's estate and trustee of the trust.

On September 30, 1991, the Transfer Inheritance Tax Bureau notified respondent that, because the Bureau had not received an inheritance tax return, it was assessing an "arbitrary" tax of $4,709.85 against the estate. By letter dated July 13, 1992, respondent filed the inheritance tax return and advised the Bureau that no tax was owed because the net estate was less than $15,000, the amount of the 1984 exemption

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[1] Respondent's father died on November 6, 1989.

for an estate left to a decedent's child.

The primary asset of the estate was a house in East Orange, New Jersey, which was encumbered by a September 15,1983 balloon mortgage given by Doris to Rose Fingerman. It is undisputed that both Doris and Rose Fingerman were clients and personal friends of respondent's father. Rose Fingerman was also respondent's godmother.

Respondent signed his name as the mortgage's preparer. His father witnessed Doris's signature. The mortgage amount was $3,250, the interest rate was thirteen percent, and the mortgage was to be paid in full by October 15, 1988. The mortgage was recorded on September 20, 1983. Until her death, Doris made the monthly mortgage payment checks to the firm of Wildstein and Wildstein or to respondent's father. Apparently, no mortgage payments were made after Doris's death.

By letter dated February 3, 1987, Anthony, who was in prison at that time, requested information from respondent about the assets and liabilities of the estate. In particular, Anthony requested that respondent provide him with information about the house:

> In regard to sale of real estate involved in the estate, I would ask for information as to the (1) tax evaluation of the real property; (2) the current actual market value of that real property; and (3) the amount the real property is to bring during settlement of the estate.

In his March 10, 1987 reply to Anthony, respondent sent an interim summary for Anthony and also promised to provide a complete report, with copies of items,

within a few weeks. In his letter, respondent told Anthony that "while your mother was alive she executed a mortgage and principal and interest has [sic] not been paid on same for a number of years." Respondent also advised Anthony that there was a Veteran's Administration lien on the house as well as an outstanding bill from the funeral home that had handled Doris's funeral and that respondent had advanced monies to pay real estate taxes. Respondent further stated that, seven months before, a broker had valued the house between $17,000 and $20,000, that respondent was having repairs made to the house prior to listing it for sale and that he believed the house could yield $30,000, "if not more," when the repairs were completed.

Although respondent promised to provide a complete report to Anthony within a few weeks, he did not do so. However, respondent testified that he had told Anthony about the status of the estate during a 1987 telephone conversation with him. There is no dispute that there were telephone conversations between respondent and Anthony from 1987 to 1994. In fact, for three months in 1990, Anthony lived in respondent's house and worked in his law firm.

In September 1994, Anthony wrote to respondent's law partner, Joseph Dacchille, requesting information about the status of the estate, particularly its debts. According to Anthony, he wrote to Dacchille because respondent had told Anthony that he was no longer handling the estate, due to illness. In his letter, Anthony also expressed his understanding that the estate would be his on January 24, 1995, when he

turned thirty-five. Anthony added that he would be released from prison in January 1995 and that it was his intention to sell the house. Dacchille replied, in October 1994, that "my limited involvement with your mother's estate has been securing rent payments from the tenants and disbursing taxes, water fees, etc. with regard to the house."

In 1995, Anthony sent three letters to Dacchille, inquiring about the estate. In his June 16, 1995 reply to the letters, Dacchille stated that he had not ignored Anthony's letters, but had "not had the opportunity to bring you current" because he wanted to review the estate in "its entirety" before replying to Anthony's questions. According to Dacchille's letter, the tenant was five months in arrears on rental payments, the taxes were "1/4 behind" and the water and insurance expenses were current. With respect to Anthony's questions about the condition and value of the property, Dacchille replied that "I would gladly obtain an appraisal for you if that is your desire." In July 1995, Anthony asked Dacchille to get the appraisal because he wanted the house to be sold.

In July 1996, Margo Cook, as attorney-in-fact for Anthony, wrote to both respondent and Dacchille and requested an accounting of the estate. By letter dated July 18, 1996, Dacchille told Cook that respondent was the executor and attorney handling the Mariano estate and that he was on vacation until the middle of August. In September 1996, respondent's secretary sent a letter to Cook stating that respondent

was in the process of preparing an informal accounting of the Doris Mariano estate, but had entered the hospital for surgery and would return to work at the end of October 1996. Despite an October 24, 1996 letter from Cook and a November 1996 letter from Anthony to respondent, respondent did not provide the accounting.

In early 1997, Anthony and Cook filed grievances against respondent. In his May 20, 1997 reply to the grievances, respondent promised to send a "detailed accounting" to Cook within thirty days. He did not do so, however.

On May 4, 1997, respondent finally listed the house with Avon Enterprise Realty for $55,000.[2] In August 1997, it was listed with Jordan Baris Realty, also for $55,000. The house was not sold and was not relisted at the expiration of the six-month listing agreement with Jordan Baris.

By letter dated August 20, 1997, respondent provided Anthony with a written accounting of Doris's estate. According to the accounting, respondent had personally loaned the estate $19,712.81, his law firm had loaned it $7,908.81, the Veteran's Administration was owed $1,487.50 and the mortgage balance was $17,000. The estate's bank balance was $2,005.48. Respondent told Anthony that the house had been listed with a broker, but had not been sold, that he was in the process of listing it with Jordan Baris and that "we are assuming that the house will bring $55,000."

According to the OAE investigator, respondent admitted that, in addition to the

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[2] Apparently, respondent had also listed the house for three months in 1984.

letters, he had received numerous telephone calls from Cook, which he had not returned, and that, prior to August 20, 1997, he had not provided Anthony with a written accounting of the estate. He also admitted that he listed the house with a realtor only in 1984 and 1997, although there had been "informal efforts" to sell it.

The investigator also testified that, according to respondent's accounting of the Doris Mariano estate, rents were paid between 1984 and 1988 and again between 1991 and 1997.

Respondent testified that he never represented Doris Mariano, who was his father's client. He admitted that he signed the Mariano/Fingerman mortgage as preparer, but maintained that his father, not he, had drafted the document. In 1983, according to respondent, he was usually responsible for inserting the metes and bounds descriptions in the mortgages for all of the real estate transactions handled by the firm. Respondent testified that he had no other involvement in the transactions. According to respondent, he had no knowledge of the Mariano/Fingerman mortgage until July or August 1997, when he prepared the accounting of the Doris Mariano estate and found his father's file for the transaction in the basement of the building where his law firm is located. At that time, according to respondent, he also discovered the documents relating to Doris's mortgage payments to the firm and his father.

Respondent testified that, when he became executor of Doris's estate in 1984, he knew that there was a Veteran's Administration lien on her estate and "I had in the

file a notation that there was a mortgage with its terms, but it didn't say who was – who was given the mortgage."

According to respondent, he did not make any efforts to ascertain the identity of the mortgagee because

> [w]ell, at the time I had received nothing; and I didn't receive anything from 1984 even until Rose [Fingerman] died in 1989 demanding any payments. Since basically there had been problems with cash flow with the house, if no one was bothering me for a mortgage I wasn't about to stir up a hornets [sic] nest because that would just lead to foreclosure.

He continued to ignore the mortgage, respondent testified, because no one contacted him about it and, except for a few years, the debts of the Doris Mariano estate exceeded its income.

Respondent did not recall how he was able to determine, in 1997, that Fingerman was the mortgagee. Respondent testified as follows:

> Somehow I was able to ascertain that [Fingerman] was the mortgage holder, and I looked and found out it was an accordion, and looked in – to the best of my recollection, looked in numerous closed files that are kept in order, my father's old accordions, until I found it.... I was just working on trying to get this [Mariano] accounting done, and that was an open thing, and somehow I discovered something, that's what led me to the file.

With respect to Anthony Mariano, respondent testified that, between 1979 and 1984, he represented Anthony in approximately twelve municipal court matters involving thefts to which Anthony eventually pleaded guilty and received probation and fines.

After Doris's death, Anthony lived in the East Orange house for a time. According to respondent, the house needed repairs and Anthony was supposed to do the repairs so that the house could be sold or rented. Respondent testified that, sometime in 1984, Anthony "ran off" with the proceeds of his mother's life insurance policy.

Apparently, respondent rented the house after Anthony left the state, but the tenants did not make the repairs they agreed to do in exchange for a reduction in the rent. In March 1987, respondent had a contractor make repairs to the property. According to respondent, he had no contact with Anthony between 1984 and 1987. The contact resumed in 1987 when Anthony was in prison in New Jersey.

With respect to respondent's promise that he would forward an accounting of the estate to Anthony in 1987, respondent testified, "I think I spoke to him on the phone.... Anthony and I had been talking now for a good deal of time because now that he was back in New Jersey he was calling me on a frequent basis." Respondent also testified that, in 1987 or 1988, and at various other times, he sent Anthony "ledger cards" showing the income and expenses of the estate.

Both respondent and his wife testified that, when Anthony lived with them in 1990, Anthony spoke frequently about the estate and the refurbishing of the house and that he was well aware of the status of the estate. Respondent also testified that he gave the Doris Mariano estate file to Anthony to review, when Anthony worked in

respondent's office. According to respondent, prior to 1997, Anthony never requested that respondent sell the house. This testimony is at variance with three letters from Anthony in 1994 and 1995.

Respondent interpreted Doris's will to mean that respondent had discretion to withhold distribution of the estate to Anthony, even after he attained the age of thirty-five, based on a prior clause in the will, as follows:

> However, notwithstanding my love for Anthony, but because of his inability to act in a responsible adult manner, I hereby absolutely grant my trustee authority to withhold moneys for maintenance or support or for any other reason he deems fit in his sole judgment until such time as Anthony is either working and/or conducting himself in a proper responsible manner as an adult. I have had numerous conversations with my Trustee and his alternate, and they are quite aware of my feelings and wishes.

In explaining his failure to reply to Anthony's and Cook's communications, respondent testified that, in September 1991, he attempted suicide. He thereafter admitted himself to New York University Hospital for "a few weeks." Since that time, he has remained under the care of a psychiatrist for "pharmacological therapy," initially Prozac, then Butyrin. Respondent did not practice law from September 1991 to late 1995 or 1996. Also, in May and August 1996, he was hospitalized for an obstruction of the intestine. In July and early August 1996, he was on vacation in France. In September 1996, he underwent surgery for the intestinal obstruction and was out of work until the end of 1996. Respondent testified that, during the times he was not practicing law, Dacchille took over his practice and that he, respondent, did not see or

have knowledge of the 1994 and 1995 correspondence between Anthony and Dacchille until 1997.

In contrast to respondent's testimony that he was not aware of the 1994 and 1995 correspondence between Anthony and Dacchille until 1997, Dacchille testified that correspondence about the Doris Mariano estate would be forwarded to respondent's home when respondent was out of the office because "[respondent] was the executor. That was the reason I didn't want any of this correspondence to go, you know, unnoticed."

Walter LaVine testified on respondent's behalf, as an expert in the areas of "general tax," wills, estates and trusts, estate planning and estate administration. With respect to respondent's authority to withhold distribution of the Doris Mariano estate from Anthony after Anthony attained the age of thirty-five, LaVine testified that there was "at least an implication that if Anthony had still not proven himself or provided evidence that he was, as she calls it, a proper responsible adult, that there could be a continued deferral."

La Vine also testified that respondent's August 20, 1997 accounting of the Doris Mariano estate was "quite extensive" and that it appeared to be "totally accurate." According to LaVine, the length of time between Doris's death and the accounting was "not unusual in the context that there had been in the interim maybe less formal kinds of reporting submitted on various occasions." In fact, LaVine testified, it was unusual

for an accounting to be as detailed as that prepared by respondent, absent a judicial proceeding.

With respect to the inheritance tax issue, LaVine testified that there was no inheritance tax owed because the beneficiaries were the decedent's children and there was no estate tax because the value of the estate was below the federal estate tax level. Since no tax was owed, LaVine added, there could not be any harm to the estate in the form of penalties and interest for failure to file an inheritance tax return.

The complaint alleges that respondent's conduct with respect to the Doris Mariano estate violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), RPC 1.7(a), (b) and (c), and RPC 1.8(a).

The Rose Fingerman Estate Matter

In February 1989, respondent's father drafted a will for Rose Fingerman, respondent's godmother, then 93 years of age. In the will, Fingerman made several specific bequests ranging from $1,000 to $5,000. The typewritten language of the will stated that the estate residue was to be left to James Grossman and Lillian Goode. Grossman's and Goode's names were crossed out, however, and respondent's name was hand-printed in as the residuary beneficiary. Respondent's father was named executor of the estate and respondent its alternate executor.

Fingerman signed the will on February 10, 1989. She died on April 6, 1989.

In April 1991, Alvin M. Cheslow filed a complaint in action for probate on behalf of respondent. The complaint alleged that the handwritten changes to the residuary clause had been made and initialed by Fingerman, before she signed the will. The two attesting witnesses to the will and the notary public filed affidavits confirming that fact.[3]

By order dated May 28, 1991, the court admitted the will to probate, ordered that letters testamentary be issued to respondent and stayed the disposition of Fingerman's residuary estate, pending the court's determination of the validity and effect of the hand-written change. On May 26, 1992, following one or two days of trial, the parties entered into a consent judgment, whereby respondent received twenty-five percent of Fingerman's residuary estate, the balance to go to Grossman, Goode and relatives of Fingerman. The judgment also provided that respondent was to complete an informal accounting of the Fingerman estate by March 31, 1992.

Respondent did not complete the accounting until December 3, 1993. He did not include the Mariano mortgage in the accounting. Respondent received $14,869.03, pursuant to the consent judgment, and $8,000 for executor's commissions.

In March 1998, respondent filed a motion to be discharged as executor of the Mariano and the Fingerman estates. The motion was granted.

As of the ethics hearing date, there were no substitute executors for the estates

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[3] The witnesses were Robert Meola, a law clerk with respondent's firm, and Henry Boggs, a doorman at Fingerman's apartment building. Respondent's wife was the notary public.

and the Mariano house had not been sold.

The OAE investigator testified that she learned of the Fingerman estate during her August 20, 1997 interview of respondent concerning the Mariano grievance. According to the investigator, respondent told her that he was the executor of the Fingerman estate, that the estate had been concluded and that the beneficiaries knew about the Mariano mortgage, but had "written it off." When the investigator requested the Fingerman estate file from respondent, he told her that he did not have it because there had been a will contest and another attorney had handled that litigation. According to the investigator, respondent did not tell her that he was a beneficiary of the Fingerman estate and that the litigation involved his interest in the estate. The investigator testified that she learned of the nature of the litigation by reviewing the surrogate's file.

The OAE investigator also testified that respondent told her, in August 1997, that he was "planning to recuse himself from either the Fingerman estate or the Mariano estate."

In December 1997, respondent told the investigator that he did not include the Mariano mortgage in his December 3, 1993 accounting of the Fingerman estate because he had forgotten about it and had only recalled the mortgage in August 1997, when he prepared the accounting of the Doris Mariano estate.

Respondent admitted that he did not tell the Fingerman estate beneficiaries about the Mariano mortgage until March 1998, when he filed the motion to be discharged as

executor, and that he never attempted to collect on the mortgage as executor of the Fingerman estate.

With respect to the execution of and change to Fingerman's will, respondent testified that his father had told him to go to Fingerman's home to obtain her signature on the will and to take Meola, the firm's law clerk, as a witness. Respondent was unsure as to how Boggs had become the second witness to the will's execution.

Respondent testified that he had reviewed each of the paragraphs of the will with Fingerman and that, when he reached the paragraph pertaining to the residuary beneficiary, Fingerman had stated that she wanted him to be the residuary beneficiary. Respondent claimed that, although he had tried to dissuade her, she was adamant. According to respondent, he then called his father, who advised him to "just cross it out. Do what she wants and then come back to the office."

Respondent testified that, after speaking with his father, he had called his wife, to notarize the will, because he did not believe that he should do it, as beneficiary of the will. Respondent testified that, after his wife arrived,

> we went over again -- I went to [Fingerman] and went through the whole thing again. And then specifically said to Rosie, 'and whom do you want your residuary to be?' And she said me. And I said, 'Would you please put -- write "to Louis."' And she wrote and put her initials. And then I had her execute the will, and then the witnesses executed the will and the self – the self-authenticating part; and then [my wife] notarized the will.

Later, respondent clarified that he, not Fingerman, had crossed out Grossman's and Goode's names on the will and printed his name, and that Fingerman had only

written "RGF to Louis."

Respondent testified that he, not his father, had become the executor of Fingerman's will because his father was dying of cancer by April 1989. According to respondent, he retained Cheslow to be the attorney for the Fingerman estate. Respondent added that Cheslow filed a complaint in action for probate of the will, after the surrogate refused to admit the will to probate because of the hand-written change.

According to respondent, he ultimately received only $10,000 to $13,000 from the Fingerman estate, because he had to pay additional fees to Cheslow. Respondent stated that he would have received $50,000 to $60,000, if he had been the sole beneficiary. Respondent testified that he did not need the funds from the Fingerman estate because he was the beneficiary of his father's estate and had a stock portfolio of more than $1,000,000.

Respondent's wife's testimony generally supported that of her husband with respect to Fingerman's execution of her will, except that Mrs. Wildstein testified that she was present when respondent initially reviewed the will with Fingerman and respondent telephoned his father. In contrast, respondent testified that his wife arrived after those events.

The complaint alleges that respondent's conduct with respect to the Fingerman matter violated RPC 1.1(a), RPC 1.3, RPC 1.7(a)and (b), RPC 1.8(c) and RPC 8.4(c).

The complaint also alleges that respondent failed to cooperate with the ethics investigation, in violation RPC 8.1(b). The basis for that allegation is that, although

respondent replied to the grievance, he failed to reply to two letters and two telephone calls from the investigator, in June and July 1997, requesting documents about the Doris Mariano estate matter. Even after respondent promised to send the documents, he failed to do so. As a result, the investigator had to go to respondent's office to review his files on August 20,1997. At that time, respondent fully cooperated with the investigator.

By letter dated August 26, 1997, the investigator requested that respondent send her his file for the Fingerman estate. After respondent was given additional time, because he could not locate the file, he told the investigator that he had only a copy of the order admitting the will to probate. The investigator then reviewed the Fingerman estate file at the surrogate's office and obtained documents from Cheslow.

* * *

The DEC found that respondent violated RPC 1.1(b)[4], RPC 1.3, RPC 1.4(a), RPC 1.7(a), (b) and (c) and RPC 1.8(a) in the Mariano matter and RPC 1.1(b), RPC 1.3, RPC 1.7(a) and (b), RPC 1.8(a) and RPC 8.4(c) in the Fingerman matter. The DEC did not find that respondent's neglect of the two estates rose to the level of gross negligence. It, therefore, dismissed the alleged violations of RPC 1.1(a). Also, the DEC did not find that respondent violated RPC 1.4(b) in the Mariano matter or that he

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[4] The complaint did not allege a violation of RPC 1.1(b), only RPC 1.1(a).

failed to cooperate with the ethics investigation, in violation of RPC 8.1(b).

The DEC disbelieved respondent's testimony that he was unaware that Fingerman was the mortgagee on Doris's mortgage until August 1997.

Initially, the DEC recommended that respondent be suspended for two years. Later, without any explanation, it changed that recommendation to an eighteen-month suspension.

* * *

There is a preliminary issue concerning the residuum evidence rule. Respondent argued that, because Anthony Mariano, Doris Mariano and Rose Fingerman did not testify at the hearing, the evidence against him was primarily based on hearsay testimony by the OAE investigator and that the evidence did not meet the requirements of the residuum evidence rule.

In a disciplinary proceeding, the rules of evidence are relaxed and hearsay evidence is permitted, "but the residuum evidence rule shall apply." R. 1:20-7(b). In Weston v. State, 60 N.J. 36, 51 (1972), the Court explained the residuum evidence rule:

> The rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it.

We find that respondent's argument lacks factual or legal merit. As correctly

asserted by the presenter, the primary evidence against respondent consists of respondent's own documents, documents filed with the court, respondent's testimony and his statements to the investigator.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Respondent violated RPC 1.7(a), (b) and (c) when he acted as the attorney, executor and trustee of the Doris Mariano estate at the same time that he was the executor and beneficiary of the Fingerman estate, which held a mortgage on the only asset of the Doris Mariano estate. This conflict was compounded by the fact that, during the time that respondent was the sole fiduciary for the Doris Mariano estate, he permitted a $3,250 mortgage to increase to $17,000 because of accrued interest. Furthermore, respondent failed to advise Anthony Mariano of the conflict. Finally, respondent did not tell the other beneficiaries of the Fingerman estate about the mortgage until March 1998, despite having "discovered" in August 1997, as he testified, that Fingerman was the mortgagee of the Mariano mortgage.[5]

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[5] Inasmuch as respondent testified that he did not inform his clients of the conflict because he was unaware of it until August 1997, there is no issue as to whether or not his clients consented to the representation after full disclosure.

We share the DEC's disbelief of respondent's testimony that he did not know that Fingerman was the mortgagee on the Mariano mortgage until August 1997. In 1987, respondent told Anthony that he was having repairs done to the property covered by the mortgage, prior to listing the property for sale. Respondent knew that the property was encumbered by a mortgage, that the mortgage had not been paid since at least 1984 and that the mortgage would have to be satisfied when the house was sold. It is implausible that respondent would not have determined the identity of the mortgagee.

Furthermore, respondent became the executor of Doris Mariano's estate in 1984 and respondent's father was still alive and practicing law in the same firm until 1989. Respondent claimed that he ultimately found the mortgage in his father's files. It is inconceivable that respondent would not have asked his father about the mortgage, knowing that Doris Mariano was his father's friend as well as his client. Finally, the mortgage was recorded and respondent could have easily obtained a copy from Essex County.

Respondent's credibility was also adversely affected by his misrepresentation to the OAE investigator, in August 1997, that Fingerman's beneficiaries knew about the Mariano mortgage and had "written it off." In fact, respondent did not even disclose the Mariano mortgage to the Fingerman beneficiaries until March 1998. Moreover, in his August 1997 accounting to Anthony, respondent listed the mortgage

as a debt of the estate.

Respondent's credibility was also adversely affected by his testimony that it was not until 1997 that Anthony instructed him to sell the house. That testimony is inconsistent with the documentary evidence. In February 1987, Anthony requested information from respondent about "the sale of the real estate." In his September 1994 letter, Anthony stated that it was "his main objective to get rid of the house." By July 1995, Anthony had unequivocally informed respondent that he wanted the house sold. Respondent testified that he did not see the last two letters, which had been addressed to Dacchille, until 1997. However, Dacchille testified that he forwarded all correspondence concerning the Doris Mariano estate to respondent's home as soon as he received it.

We find, thus, that respondent had to know of the existence of the mortgage prior to 1997 and, that, by compromising the interests of both estates, which were in a conflicting situation, he violated RPC 1.7.

We further find that, respondent violated RPC 1.8(a) when he became the residuary beneficiary of the Fingerman estate, thereby acquiring a pecuniary interest adverse to Anthony and to the Doris Mariano estate.

Even if respondent did not know that Fingerman was the mortgagee of Doris Mariano's mortgage until August 1997, a conflict existed between August 1997 and March 1998, when respondent filed his motion to be discharged as executor of the

estates. Respondent did not explain why, for seven months, he failed to act or to even advise his clients of the conflict .

RPC 1.8(c) prohibits an attorney from preparing an instrument that gives the attorney or a person related to the attorney as parent, child, sibling or spouse "any substantial gift from a client, including a testamentary gift, except where the client is related to the donee." The evidence indicates that respondent's father, not respondent, drafted Fingerman's will and that respondent was supposed to merely witness the execution of the document. However, it is clear that respondent changed the residuary beneficiary clause by crossing out Grossman's and Goode's names and writing in his own name. It is immaterial that the change was made at Fingerman's request. Respondent was the drafter of that clause of Fingerman's will and that clause made him the residuary beneficiary of Fingerman's estate.

An effort was made, through LaVine's testimony, to equate Fingerman's relationship with respondent, as godmother/godson, to that of a relative. However, it is undisputed that respondent was not actually related to Fingerman. Therefore, there is clear and convincing evidence that respondent violated RPC 1.8(c) when he made himself the residuary beneficiary of Fingerman's estate.

The DEC found that, although respondent did not act with diligence as fiduciary for the Mariano and Fingerman estates, his conduct did not rise to the level of gross neglect. The DEC found, however, that respondent's neglect of the estates and of his

duties as trustee of the Mariano testamentary trust established a pattern of neglect, in violation of RPC 1.1(b), a violation not charged in the complaint. Generally, three instances of neglect are required to find a pattern of neglect. Because there are only two matters involved here and because the complaint did not charge a pattern of neglect, we dismiss the DEC's finding of a violation of RPC 1.1(b).

On the other hand, there is clear and convincing evidence that respondent was guilty of gross neglect, at least in his handling of the Mariano estate. During the fourteen years that he served as its executor, he allowed the $3,250 mortgage, which had a thirteen percent interest rate, to swell to $17,000. Moreover, the house was never sold and it produced little income.

Respondent blamed Anthony for the improper administration of the estate, claiming that, at various times, Anthony indicated that he intended to repair the house and eventually live in it. Yet, respondent depicted Anthony as totally irresponsible, a liar and a thief. In fact, even after Anthony turned thirty-five, respondent refused to turn over the estate to him because of his alleged irresponsibility and his criminal behavior. Under Doris's will, respondent had absolute authority and discretion to administer her estate. She created a testamentary trust specifically to assure that her son would not waste his small inheritance. It is unreasonable, thus, for respondent to blame his own neglect of the estate on the very person from whom he was to protect it.

We agree with the DEC's finding that respondent violated RPC 8.4(c) when he

settled the Fingerman estate without disclosing the Mariano mortgage to the Fingerman beneficiaries.

We find, however, no violation of RPC 1.4(a). The evidence established that there were numerous telephone conversations between respondent and Anthony. In fact, Anthony lived with respondent for three months in 1990 and worked in respondent's office. Although there was no formal written accounting prior to 1997, respondent, his wife and Dacchille testified that Anthony was frequently informed about the status of the estate. Therefore, there is no clear and convincing evidence that respondent violated RPC 1.4(a).

However, respondent violated RPC 1.4(b) when he failed to disclose to Anthony that the Fingerman estate was the mortgagee and that he was the residuary beneficiary of the Fingerman estate. By his own admission, respondent knew, when he sent his accounting to Anthony, that Fingerman was the mortgagee and that he had a conflict. Yet, he failed to disclose that fact to Anthony. Therefore, he failed to explain the status of the estate to the extent "reasonably necessary" for Anthony to make an informed decision regarding respondent's representation of the estate.

Finally, the DEC properly dismissed the alleged violation of RPC 8.1(b). Although respondent's replies to requests for information and documents were incomplete and tardy, his inaction did not rise to the level of unethical conduct.

* * *

There remains the issue of discipline. It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand constitutes sufficient discipline for engaging in a conflict of interest situation. In re Berkowitz, 136 N.J. 134, 148 (1994). See In re Mangold, 148 N.J. 76 (1997) (reprimand where the attorney participated in non-relative's estate when he had drafted the will and served as executor); In re Polis, 136 N.J. 421 (1994) (reprimand where the attorney drafted a will for an elderly widow under which the attorney's sister was the primary beneficiary).

Where an attorney's conflict of interest has caused serious economic injury or the circumstances are more egregious, the Court has not hesitated to impose a period of suspension. See In re Humen,123 N.J. 289 (1991) (two-year suspension where the attorney engaged in numerous sensitive business transactions with his client, in which the attorney's interests were in direct conflict with those of the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension where attorney induced his client to lend large sums to another client of whom respondent was a creditor, without informing the first client of the financial difficulties of the borrowing client); In re Dato, 130 N.J. 400 (1992) (one-year suspension where attorney represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value and resold it ten days later for a $52,500 profit); In re Rinaldo,155 N.J. 541 (1998)

(three-month suspension where attorney drafted a contract for both parties at the request of one, then represented that party in an action against the other party and concealed his representation by hiring attorneys per diem to handle the matter; in two other matters, the attorney violated RPC 1.1(a) and RPC 1.15(c); he had previously received a private reprimand and a public reprimand); In re Guidone, 138 N.J. 273 (1994) (three-month suspension where the attorney deliberately concealed his involvement in a partnership that was purchasing property from the Lion's Club, when he was already representing the Lion's Club in the transaction); In re Hurd, 69 N.J. 316 (1976) (three-month suspension where attorney advised his client to transfer title to property to attorney's sister for twenty percent of property's value).

Respondent's misconduct was not as egregious as that of the attorneys in Humen, Harris and Dato. Yet, respondent was guilty of other violations of the Rules of Professional Conduct, in addition to the conflict of interest rules, and he has an ethics history, having received both a private and a public reprimand.

However, we are also mindful that the sole asset of the Doris Mariano estate was problematic and that Anthony Mariano was a troublesome beneficiary. Furthermore, during part of the relevant time, respondent suffered serious medical and psychological problems.

In light of the foregoing, a five-member majority voted to suspend respondent for three months. Two members voted for a reprimand. One member recused himself

and one member did not participate.

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

Dated: 10/9/2020

By: _____
ROCKY L. PETERSON
Vice-Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Louis Wildstein
Docket No. DRB 00-028

Argued: April 13, 2000

Decided: October 9, 2000

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling						X	
Peterson		X					
Boylan							X
Brody		X					
Lolla		X					
Maudsley			X				
O'Shaughnessy			X				
Schwartz		X					
Wissinger		X					
Total:		5	2			1	1

Robyn M. Hill 1/10/01
Robyn M. Hill
Chief Counsel