

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-070

IN THE MATTER OF :
:
HOLLISTYNE C. BLUITT :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: April 15, 2004

Decided: May 17, 2004

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Lorry B. Bonds appeared on behalf of respondent.

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

This matter was before the Board based on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent.

Respondent stipulated to facts showing that she violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep a client reasonably informed about the

status of the matter), and (b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.7(b) (conflict of interest - representing a client where the representation may be materially limited by the lawyer's responsibilities to a third person), RPC 1.15(b) (failure to safeguard estate funds), R.1:21-6(b)(8) and RPC 1.15(d) (recordkeeping violations - failure to reconcile attorney trust account), and RPC 8.1(b) [cited as R.1:20-3(g)(3)] (failure to cooperate with disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1984. She maintains a law office in Orange, New Jersey.

In 1992, respondent received a private reprimand for executing an improper jurat on a deed in connection with a real estate transaction, a violation of RPC 8.4(c) and (d). In the Matter of Hollistyne C. Bluitt, Docket No. DRB 92-322 (October 6, 1992).

The disciplinary stipulation set forth the relevant facts in this matter by incorporating the investigative report prepared by an OAE auditor. The investigative report provides as follows.

In February 2002, William H. Goins, Jr. filed a grievance against respondent, alleging that as the executrix and attorney for his late father's estate, she failed to properly handle or

finalize the estate after four and one-half years. Respondent had been retained by the decedent to prepare and draft his last will and testament, which named her as the executrix.

Following the filing of the grievance, the OAE scheduled a demand audit of respondent's books and records for March 13, 2003. At respondent's request it was postponed until March 20, 2003, at which time the OAE reviewed her records for the period from September 1, 1997, forward. Thereafter, by letter dated April 17, 2003, the OAE asked for additional documentation relating to the matter. Respondent failed to reply. Following a telephone call from the investigator, respondent submitted only some of the requested items, and asked for an extension of time to fully reply. Respondent did not observe the new deadline, but did submit additional documentation one month later. Respondent failed to supply all of the additional documents requested by the OAE.

The decedent died on October 6, 1997. His estate consisted of several stocks, bonds, a bank account, property in New Jersey, which was transferred to his spouse, and property in Georgia, which was to be transferred to his son, Curtis Goins. Respondent maintained the estate funds in her trust account.

During the course of the OAE demand audit, respondent stated that the grievant and his brother were nuisances because they often came to her office unannounced and demanded money.

She admitted that she lacked the familiarity needed for such matters and was unsure how to liquidate the stocks and bonds in the estate. As a result, she put the matter on the "back burner." As of the date of the audit, three stocks had not been transferred or sold. In addition, at that time, she had in her possession several "stale" dividend checks payable to the estate, which she never distributed or deposited into the estate account. Respondent also confessed that, once she learned that a grievance had been filed in the matter, she stopped working on the estate.

On May 11, 1999, Lawrence Goins, another of the grievant's brothers, retained an attorney to obtain information from respondent about the status of the estate. Despite several requests from the attorney, respondent did not reply until June 23, 2000, at which time she promised to have the estate completed by the end of July 2000. Based on these assurances, Lawrence discharged the attorney. Respondent, however, failed to finalize the estate.

As of the date of the OAE demand audit, respondent had not transferred the Georgia property. She believed that a Georgia attorney was required to complete the transfer. Although respondent claimed that she continued to pay the property taxes on the Georgia property on behalf of the estate, the grievant provided the OAE with a copy of a tax delinquency notice,

stating that property taxes in the amount of \$42.77 had not been paid since June 20, 2003. Respondent had also failed to pay the taxes in 1999.

Respondent had retained her husband's accounting firm to handle the estate's tax obligations. He charged the estate for the following income tax services: for one half-year of services in 1997 - \$125 for one hour of services - in 1998 for approximately two hours of service - \$275; in 1999 - \$975 for approximately four hours of services. In 1999, the beneficiaries informed respondent that they wanted to retain another accountant to prepare the estate's taxes. Respondent, however, dissuaded them from doing so, stressing her husband's familiarity with the estate.

As of the date of the March 20, 2003 demand audit, the 2001 tax return and amended 2000 tax return had still not been filed. At that time respondent admitted that, after the grievance was filed, she had not provided any further accountings to the beneficiaries and had failed to prepare three-way reconciliations of her attorney trust account.

The investigation revealed that, in the six years after the decedent's death, respondent had not finalized the estate, which consisted only of assets to be transferred to the beneficiaries. Respondent failed to seek the advice of professionals to assist her in the sale or liquidation of the stocks. During those six

years, respondent kept the estate funds in her trust account; thus, the estate did not earn any interest. Respondent had put the estate on the "back burner" and stopped working on it until prompted to do so by the OAE. Nevertheless, as of the date of the investigator's report, October 15, 2003, the estate was not yet closed.

According to the grievant, respondent failed to communicate with him and the other beneficiaries. Because she failed to provide them with certain information about the estate, they had to appear at her office to obtain information.

As to the conflict of interest, respondent continued to use her husband's services even after the beneficiaries expressed their desire to use someone else's accounting services. Respondent permitted her husband to charge the estate without questioning his rate. Moreover, her failure to timely conclude the estate resulted in additional fees for tax services.

Finally, respondent failed to safeguard the estate's funds: she permitted several dividend checks to go "stale", and, after the grievance was filed, did not finalize the estate, thereby incurring additional fees payable by the estate.

Respondent's failure to conclude the estate violated RPC 1.1(a) and RPC 1.3; her failure to communicate with the beneficiaries violated RPC 1.4(a) and (b); her failure to timely conclude the estate, thereby incurring additional expenses,

violated RPC 1.15(b); and her failure to reconcile her attorney trust account violated RPC 1.15(d).

As to respondent's admitted violation of RPC 8.1(b), although she did not thwart the OAE's investigation in the matter, we find that her failure to reply to the OAE's requests for information as completely or as timely as she should have, violated this rule.

Notwithstanding that respondent stipulated to engaging in a conflict of interest, we do not find that the facts stated in the stipulation support such a violation. The stipulation did not address whether respondent failed to disclose the circumstances surrounding the conflict. Moreover, respondent did obtain her client's consent to have her husband continue his involvement with the estate, because of his familiarity with it. We, therefore, do not find the requisite elements for a conflict of interest: clear and convincing evidence of respondent's failure to provide full disclosure to the client of the circumstances, and failure to obtain the client's consent to the continued representation. We, therefore, dismiss this charge.

The only issue left for determination is the quantum of discipline. The OAE suggested that the proper range of discipline is a censure to a short suspension.

The discipline imposed by the Court in cases involving similar violations has ranged from a reprimand to a three-month

suspension. See In re Weiss, 173 N.J. 323 (2002) (reprimand where, in an estate matter, the attorney failed to file a fiduciary income tax return for more than four years, and failed to prepare an estate accounting, refunding bonds, and releases for the beneficiaries of the estate); In re Cheek, 162 N.J. 98 (1999) (reprimand where the attorney grossly neglected an uncomplicated estate matter, failed to communicate with the executrix and beneficiaries with respect to the status of the matter, and failed to maintain proper trust and business account records; the attorney had a prior admonition at the time); In re Morris, 152 N.J. 155 (1998) (reprimand where the attorney grossly neglected an estate by failing to take any substantial action for a period of eleven years, including failing to file an inheritance tax return, open an estate account, or deposit checks forwarded to the estate; the attorney ultimately made restitution to the estate for its losses totaling more than \$8,000; the attorney had a prior admonition for mishandling an estate).

Three-month suspensions have been imposed in more serious matters where the Court considered the impact of the misconduct, ethics histories or the default nature of the proceedings. See In re Rodgers, 177 N.J. 501 (2003) (three-month suspension for attorney who, as the administrator of an estate, engaged in gross neglect, lack of diligence, failure to communicate, and

failure to properly deliver funds or property to a client or third person; as a result of his conduct, the successor administrator obtained a judgment against him for \$70,000 plus interest for his malfeasance); In re Cubberley, 171 N.J. 32 (2002) (in a default matter, three-month suspension imposed where the attorney failed to complete an informal accounting in an estate matter for more than eight months, failed to reply to numerous requests for documents by the beneficiary of the estate, and failed to cooperate with ethics authorities; as of that time, the attorney had a prior admonition, two reprimands, and a temporary suspension); In re Rosen, 170 N.J. 630 (2002) (three-month suspension where attorney exhibited gross neglect and a lack of diligence over a six-year period in settling an estate, failed to communicate with clients or to protect their interests upon termination of the representation, and in another matter engaged in gross neglect and lack of diligence, charged an unreasonable fee, breached an escrow agreement, and displayed a pattern of neglect; attorney had a prior admonition and reprimand); In re Mandle, Jr., 170 N.J. 70 (2001) (three-month suspension where attorney failed to properly and timely prepare an estate's state tax returns, resulting in an assessment to the estate of more than \$7,000 in penalties and interest, and failed to cooperate with disciplinary authorities; the attorney had three prior reprimands); In re Wildstein, 169 N.J. 220 (2001)

(three-month suspension where attorney grossly neglected the handling of an estate, engaged in a conflict of interest, and improperly drafted a will by changing the residuary beneficiary clause from the names of others to himself, violating RPC 1.8(c); notwithstanding that the change had been made at the testator's request, he failed to explain a matter to the extent necessary to permit the client to make informed decisions about the representation, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; the attorney had prior private and public reprimands); and In re Payton, 168 N.J. 109 (2001) (three-month suspension in a default matter where the attorney failed to file inheritance tax returns or to appeal tax assessments, significantly delaying the administration of the estate; the attorney's inaction resulted in a loss of \$2,000 in interest penalties to the estate; the attorney also failed to prepare a writing memorializing the fee, failed to communicate with clients, and engaged in recordkeeping violations; at the time, the attorney had a prior admonition and reprimand).

Here, respondent failed to complete the estate. Admittedly, she put it on the "back burner" because she was unsure how to proceed, and then failed to take any further action once the grievance was filed. Respondent's conduct caused some financial harm to the beneficiaries: interest was not earned for the estate, additional tax preparation fees might have been incurred

by the estate, and checks remained undeposited. Her conduct, however, did not include significant losses to the estate or its beneficiaries as in Rodgers, a failure to cooperate with ethics authorities, resulting in default proceedings, as in Cubberley, misrepresentations as in Wildstein, or a significant ethics history. We find that respondent's ethics history, a private reprimand, which occurred twelve years ago, does not warrant the increase of the discipline required for her conduct in this matter.

Based on the foregoing, we unanimously determine that a reprimand is the proper discipline for respondent's ethics infractions. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

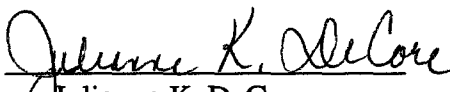
In the Matter of Hollistyne C. Bluitt
Docket No. DRB 04-070

Argued: April 15, 2004

Decided: May 17, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>							X
<i>Boylan</i>			X				
<i>Holmes</i>			X				
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
Total:			7				2


 Julianne K. DeCore
 Chief Counsel