

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-312

IN THE MATTER OF :
THOMAS M. KEARNEY, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 20, 1991

Decided: January 8, 1992

Thomas W. Dunn appeared on behalf of the District IIA Ethics Committee.

Respondent did not appear for oral argument.

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

This matter was before the Board based upon a recommendation for public discipline filed by the District IIA Ethics Committee ("DEC").

The two-count formal complaint charged respondent with violation of RPC 1.15(b), by his failure to promptly deliver to an estate beneficiary funds to which she was entitled and failure to provide an accounting (count one), and also by his failure to maintain a bona fide office (count two). At the DEC hearing, the presenter withdrew the allegations contained in the second count of the complaint. Also, by letter dated January 4, 1991, the DEC informed respondent that the complaint had been amended to include a charge of violation of RPC 8.1(b), for his failure to answer the

complaint.

Respondent did not appear at the DEC hearing. On March 14, 1991, the Court temporarily suspended him. Said suspension was continued by order dated March 25, 1991, as a result of his failure to comply with the Office of Attorney Ethics' inquiries about the disposition of \$1,000 to \$3,000 in estate funds. There is currently a matter pending before the DEC to investigate whether respondent might have misused such funds.¹

Respondent was admitted to the New Jersey bar in 1984. The grievant herein is Shirley Bennett, the daughter of Johnnie Mae Fennel, who died in December 1988, naming Bennett and her brother as beneficiaries of her estate. Prior to Fennel's death, respondent had been retained to handle the sale of her residence. When Fennel died one week before the closing of title, Bennett's brother hired respondent to complete the transaction, distribute the proceeds of the sale to him and Bennett, as provided in Fennel's will, and to otherwise settle the estate.

Following the closing, the sale proceeds were, in fact, divided between Bennett and her brother. For some reason not explained by the record -- but presumably for the payment of the estate expenses -- a portion of the sale proceeds was entrusted to respondent.

Thereafter, Bennett and her own attorney attempted to contact

¹ In that matter, respondent allegedly misappropriated between \$1,000 and \$3,000 in estate funds. Respondent has eluded the OAE's efforts to contact him, but a preliminary accounting appears to show that the funds are indeed missing.

respondent several times. They were unsuccessful, but for one occasion. Twice in March 1989 and then again in April 1989, her attorney wrote letters to respondent seeking information about the payment of certain expenses as well as the final distribution of the estate assets. Only once did respondent reply. By letter dated June 17, 1989, respondent enclosed a statement of expenses paid on behalf of the estate (Exhibit C-6). On October 12, 1989, Bennett's attorney again wrote to respondent, asking for a copy of the New Jersey inheritance tax return, "together with a statement of tax bills paid and balance of assets," within ten days thereof. When respondent failed to comply with his request, the attorney sent a follow-up letter on November 2, 1989. As of the DEC hearing date, January 30, 1991, neither Bennett nor her attorney had heard from respondent. According to Bennett's calculations, there remains a sum of approximately \$1,000 in undistributed assets. As Bennett testified at the DEC hearing, her real concern is for proof that respondent has, in fact, paid all estate expenses.

At the conclusion of the DEC hearing, the panel found that respondent had failed to provide an accounting of the estate assets and expenses and had failed to deliver to Bennett property to which she was entitled, in violation of RPC 1.15(b). The panel also found that respondent had failed to cooperate with the disciplinary system, by not filing an answer to the formal complaint and by not appearing at the hearing.

CONCLUSION AND RECOMMENDATION

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

On numerous occasions, Bennett and her attorney requested that respondent provide them with a final accounting, to no avail. Although respondent supplied a statement of the expenses paid on behalf of the estate to Bennett's attorney, to date he has not submitted a final accounting, despite Bennett's requests since March 1989.

Moreover, respondent's attitude toward the disciplinary authorities may only be characterized as disdainful. On October 10, 1990, the DEC secretary served respondent with the formal complaint and notified him that an answer should be filed within ten days. Respondent ignored the secretary's request for an answer. On January 4, 1991, the DEC secretary again advised respondent that the filing of the answer was mandatory and notified him that the complaint had been amended to include a charge for failure to cooperate with the ethics system. The DEC secretary demanded that respondent file an answer within five days. Respondent ignored that letter as well. "An ethics complaint should be considered -- as it certainly is by the vast majority of all practicing attorneys -- as entitled to a priority over any other matter the lawyer may have in hand that can possibly be postponed." In re Kern, 68 N.J. 325, 326 (1975).


Respondent's callous indifference toward the ethics system was

further compounded by his failure to appear at the DEC hearing on January 30, 1991 and the Board hearing on November 20, 1991. Disrespect to the disciplinary authorities constitutes disrespect to the Supreme Court, inasmuch as the district ethics committees and the Disciplinary Review Board are an arm of the Court. In re Grinchis, 75 N.J. 494, 496 (1978).

Having determined that respondent's conduct was unethical, the Board must recommend the imposition of discipline that is commensurate with the gravity of the ethics offenses. In In re Smith, 101 N.J. 568 (1986), the Court suspended for three months an attorney who grossly neglected the handling of an estate matter, failed to communicate with the executrix and failed to cooperate with the district ethics committee. The attorney failed to reply to four letters from the committee and failed to file an answer to the complaint. The attorney did appear, however, at the committee and the Board hearings, although he was late for the latter. Here, too, respondent mishandled an estate matter and displayed a cavalier attitude toward the disciplinary system. But, unlike attorney Smith, he failed to file an answer to the formal complaint and failed to appear at both the DEC and the Board hearings. The inescapable conclusion is that respondent harbored nothing short of contempt for the ethics system. See In re Moorman, 118 N.J. 422 (1990). Accordingly, the Board unanimously recommends that respondent be suspended for a period of six months. In addition, the Board recommends that respondent not be reinstated to the practice of law until all matters now pending before the DEC are

concluded.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 1/8/1992 By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board