SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-063

IN THE MATTER OF

KATHLEEN F. GAHLES,

AN ATTORNEY AT LAW

Decision

Argued: May 14, 1998

Decided: September 28, 1998

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

John J. Shannon appeared on behalf of respondent, who was not present.

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

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

Respondent was admitted to the New Jersey and New York bars in 1982. She maintains a law office in Neshanic Station, New Jersey. Respondent has no history of discipline.

The District VIII Fee Arbitration Committee referred this matter to the OAE on April 7, 1997, finding that there was overreaching in an estate matter. The stipulation sets forth the following facts:

Kevin McCarthy was referred to respondent by his sister, Anne McCarthy, to have a will drafted. On February 2, 1993 respondent prepared a will for McCarthy, who was terminally ill. In the will, McCarthy named Kevin Burke as his principal beneficiary. Respondent was named the estate's executrix.

McCarthy died on February 20, 1993. Shortly thereafter, the decedent's sister notified respondent of her brother's death. McCarthy's will was admitted to probate on July 22, 1993 and letters testamentary were subsequently issued to respondent.

In accordance with respondent's request, Burke and Anne McCarthy provided her with the documents needed to administer McCarthy's estate. The estate was comprised primarily of non-probate assets that included a joint bank account with Burke, a home that Burke and McCarthy owned as joint tenants with a right of survivorship and an IRA account naming Burke as the beneficiary. The remaining assets consisted of savings bonds and twenty shares of Disney stock. The stock was bequeathed to Anne McCarthy.

All of the debts of the estate, including funeral expenses, medical bills, credit card bills and an automobile lease were paid by Burke. Respondent "confirmed" these disbursements after the fact and determined that there were no outstanding expenses or uncollected insurance benefits.

Between April and December 1993 respondent wrote several letters on behalf of the estate to various entities, such as McCarthy's auto leasing company and his life insurer. The stipulation does not indicate the substance of these communications. Respondent also provided pro bono legal representation to Burke in connection with an investigation by the U. S. Attorney's Office concerning Burke's deposit of McCarthy's Social Security checks received after McCarthy's death.

On December 21, 1993 respondent opened an estate checking account at Midlantic Bank. She also transferred $22,614.72 from the McCarthy/Burke joint account to the estate account. For unknown reasons, the McCarthy/Burke joint account was frozen by the bank after McCarthy's death.

During 1994 respondent did almost no work on the estate. Burke became dissatisfied with the fact that the administration of the estate had not been completed and the transfer inheritance tax return had not been filed. Finally, in May 1995, respondent presented Burke with a draft of the inheritance tax return. The draft, however, not only was incomplete and inaccurate, but it also overstated the value of the estate, thereby inflating the taxes owed.

At one point Burke sought accounting advice from a certified public accountant and legal advice from C. Boyd Cote, Esq. On May 3, 1995 Cote wrote to respondent asking that she resign as the executrix of McCarthy's estate. When respondent refused to do so, Cote filed an action to remove her as executrix. On August 16, 1995 a consent order was entered removing respondent as executrix and naming Burke as the estate's executor. The order also required respondent to turn over the estate file to Cote within ten days and to produce an accounting within thirty days. When respondent failed to supply the accounting, Cote reminded her of that obligation in writing on September 20, October 6, November 3 and December 12, 1995. Finally, on December 14, 1995 Cote filed a motion to compel compliance with the court order. Prior to the return date of the motion, respondent sent Cote an informal accounting of the estate. In March 1996 she forwarded another accounting to Cote.

Because of respondent's failure to timely pay the inheritance tax due, the estate was assessed penalties. According to the stipulation, respondent also failed to transfer title of the stocks and bonds from McCarthy to the rightful beneficiary.

The stipulation also states that, although respondent made certain disbursements to herself, she made no other disbursements from the estate account.

The stipulation recites that respondent's conduct violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence).

There were no aggravating factors presented in this matter. In contrast, a number of mitigating factors were cited in the stipulation: (1) respondent has no prior discipline (2) she was fully cooperative with the investigation; and (3) she was beset by a number of personal problems during the relevant time period. According to the stipulation, respondent was involved in a contentious divorce action at the time and her husband was abusive. The abuse continued even after the husband left the marital home. Also, respondent's grown stepson had to be removed from the house pursuant to a domestic violence order. As a result of these domestic problems, respondent sought therapy for herself and for her two young children.

During the same time period, respondent experienced the death of a number of close relatives, including her father, an aunt with whom respondent had been close, a cousin with whom she had grown up and her brother-in-law. When respondent's brother-in-law died, she was required to assist her sister in moving from Florida to New Jersey and to oversee the litigation in Florida relating to the accidental death of her brother-in-law.

From mid-1991 to June 1993, respondent was also involved in two consecutive RICO trials. Her involvement in these cases had a profound impact on her solo practice, causing a backlog of work and preventing her from keeping current with her other legal matters.

Lastly, respondent lacked experience in estate matters. She is basically a criminal defense attorney with some background in matrimonial and real estate practice.

The OAE recommended the imposition of a reprimand for respondent's conduct in this matter, while respondent urged the imposition of an admonition.

* * *

Upon a de novo review of the record, the Board is satisfied that the facts set forth in the stipulation clearly and convincingly establish that respondent's conduct was unethical.

Respondent's conduct was serious. She failed to file the inheritance tax return, causing the estate to be assessed penalties. When respondent refused to resign as executrix, Burke's new attorney had to initiate an action to have her removed. An order was entered requiring respondent to turn over the estate file within ten days and to produce an accounting of the estate within thirty days. Respondent failed to comply with the order. It took four letters and a motion before respondent produced an informal accounting of the estate. Respondent's conduct in this matter constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively.

Similar conduct has warranted either a reprimand or a short-term suspension. See In re Vaughn, 148 N.J. 87 (1997) (reprimand for gross neglect, lack of diligence and failure to communicate with client; attorney had history of discipline including a private reprimand and public reprimand); In re Skokos, 147 N.J. 556 (1997) (reprimand for gross neglect, lack of diligence and failure to communicate); In re Smith, 101 N.J. 568 (1986) (three-month suspension for gross neglect in handling estate matter, failure to diligently pursue client's interests and failure to cooperate with ethics authorities).

The Board found significant mitigating factors that accounted for, but did not excuse, respondent's failure to handle the matter responsibly, including that she has no history of discipline. The Board, therefore, unanimously voted to impose a reprimand. One member did not participate.

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

Dated: 9/28/98

By: ____________________
LEE M. HYMERLING
Chair
Disciplinary Review Board