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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-340

IN THE MATTER OF
HARDGE DAVIS, JR.
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)]

Decided: April 5, 1999

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. On June 25, 1998, the OAE sent a copy of the complaint by regular and certified mail to respondent's last known office address: 69 Lincoln Park, Newark, NJ 07102. The regular mail was not returned. The certified mail return receipt ("green card") indicates delivery on June 29, 1998. The signature is that of T. Rainey. Respondent failed to file an answer to the complaint.

On July 22, 1998, the OAE sent respondent a second letter stating that, if he failed to file an answer, the allegations of the complaint would be deemed admitted and the record would be certified directly to the Board for the imposition of sanctions. Neither the regular mail nor the certified mail or the green card was returned. When respondent did not file an answer to the formal ethics complaint, the matter was certified to the Board on August 18, 1998.

Subsequently, on August 24, 1998, respondent sent an answer to the OAE. The OAE returned the answer to respondent on September 5, 1998 because the matter was proceeding on a default basis. On September 16, 1998, respondent filed a motion to vacate the default, alleging that he had a meritorious defense to the underlying charges. In that motion respondent included an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1977. At the relevant times, he maintained an office at the above address in Newark, New Jersey. On April 22, 1998, the Board admonished him for ignoring the ethics authorities' requests for information about the grievance and not filing an answer to the formal ethics complaint for over eight months. In the Matter of Hardge Davis, Jr., Docket No. DRB-98-126 (1998).

The complaint alleged that, sometime between May 19, 1993 and July 2, 1993, Anna L. Phillips retained respondent to prepare an accounting for a guardianship and to appear in court with Phillips on July 2, 1993. Phillips had been appointed as guardian of Lannie L. Sanders on October 2, 1992 and had been required to file an inventory of the guardianship

estate and an intermediate accounting by April 1, 1993. She had failed to do so, hence the judge's direction that she appear in court on July 2, 1993. In the answer filed with the motion to vacate the default, respondent acknowledged that he had prepared the required documents and had appeared on Phillips' behalf on July 2, 1993, but denied that Phillips had retained his services.

On July 6, 1993, respondent was informed in writing by the Monmouth County Surrogate's Office that his submission was incomplete and, therefore, unacceptable. According to the ethics complaint, respondent failed to reply to the Surrogate's Office. In his answer, respondent contended that he called the Surrogates' Office and explained that Phillips was not able to provide him with the necessary documents because she was hospitalized with cancer.

Over the next two years, both the court and the Surrogate's Office sent additional correspondence to respondent on five different dates. The complaint stated that respondent ignored all of the correspondence, a charge that respondent denied in his answer.

Ultimately, the court issued an order to show cause directing respondent and Phillips to appear before it on January 26, 1996. Respondent appeared, stated that Sanders had died and claimed that a final accounting would be filed with the Surrogate's Office within thirty days. When respondent did not file the accounting, on March 21, 1997 counsel for Western Surety Corp. ("Western") complained to the court, adding that respondent had failed to

communicate with counsel as well.¹ The court then wrote to respondent and requested that he reply, in writing, by April 7, 1997. Respondent did reply on that date and advised both the court and Western that the accounting would be completed by April 18, 1997. When respondent failed to file the accounting on that date, the court directed that he do so by May 23, 1997.

After respondent once again did not file the accounting, the court issued an order to show cause directing him to appear before it on July 17, 1997. On that date, respondent filed a final accounting of the assets of the Sanders estate with the Monmouth County Surrogate. The Surrogate concluded, however, that the accounting did not balance out, was incomplete and was undocumented. On July 24, 1997, the Surrogate requested that respondent correct and explain the accounting. According to the ethics complaint, respondent did not comply with that request. Respondent, in turn, claimed that he informed the Surrogate that he could not file the accounting because he did not have the necessary documents. On August 20, 1997 and September 3, 1997, the court directed respondent to complete the accounting for the Sanders estate. Respondent did not comply with the judge's order.

On September 23, 1997, respondent appeared at the OAE for an audit of his trust account and a review of the Sanders estate file, at which time respondent admitted that he had not completed the accounting. Respondent claimed that he was unable to obtain several canceled checks and bank statements from Phillips because of her illness and that Phillips'

1 The complaint states that Western was "the issuer of the fiduciary bond."

son was not cooperating with him. Respondent further claimed that he had ordered the missing records from First Union Bank and that he should have them within "a couple of weeks." According to the complaint, respondent admitted to the OAE that he had not replied to the court's order or to communications from the Surrogate's Office. In his answer, however, respondent denied making that admission. The OAE directed respondent to obtain all of the missing records and to provide a complete, documented accounting to the court, the Surrogate's Office and the OAE. Respondent agreed that he would do so by October 11, 1997.

The OAE scheduled a continuation of the audit and review of the Sanders estate file for December 1, 1997. Although respondent appeared, he had not completed the accounting. He attributed this failure to First Union Bank's delay in sending the missing records.

On December 10, 1997, the OAE subpoenaed the missing records from First Union Bank. On December 23, 1997, First Union sent the requested photocopies of checks and bank statements to the OAE. The items were forwarded to respondent, who acknowledged to the OAE that, with the receipt of the bank records, he had all of the documents necessary to complete the accounting. Respondent claimed that he later informed the OAE that he was wrong and that the records subpoenaed by the OAE were incomplete.

On February 25, 1998, over four and one-half years after respondent submitted his initial incomplete accounting, respondent told the OAE that he needed only a couple of weeks to finalize it. Respondent claimed, however, that he also told the OAE that he needed

to get more records in order to do so. On March 20, 1998, respondent assured the OAE that he would submit the accounting by March 31, 1998. To date, respondent has not filed the accounting.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 3.4 (c) (knowingly disobeying rules of a tribunal) and RPC 8.1(b) (failure to cooperate with the ethics authorities).

* * *

Service of process was properly made in this matter. Following a de novo review of the record, the Board found that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1). Furthermore, because respondent did not present an affirmative defense to his failure to answer the complaint, the Board denied his motion to vacate the default.

The Board found that respondent's behavior constituted gross neglect (RPC 1.1(a)). It has now been more than five years since respondent was entrusted with the responsibility of filing an intermediate accounting. In that time, Sanders died and respondent has failed to file an accounting for the estate. The Board determined that this five-year delay also supports

a finding that respondent failed to act with reasonable diligence (RPC 1.3). However, the Board dismissed the charge of failure to expedite litigation (RPC 3.2), as litigation was not involved here, only the guardianship and estate matters.

The Board also found a violation of RPC 3.4(c) (knowingly disobeying rules of a tribunal). Under the many directives of the court, respondent was to submit a complete and accurate accounting: first of the guardianship and subsequently of the estate. Respondent has never complied with the court's orders.

Finally, respondent violated RPC 8.1(b) by failing to file a timely answer to the formal ethics complaint.

Respondent's behavior and excuses were particularly disturbing, considering that he could have withdrawn from the representation. Pursuant to RPC 1.16(b), an attorney may withdraw from representation in a variety of circumstances, including when "a client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services." Surely, if Phillips and her son were not cooperating with respondent to a degree that led him to ignore court orders for five years, he should have opted to withdraw from the representation.

A reprimand was imposed on an attorney for failure to conclude the probate of an estate for six years and failure to communicate with representatives of the estate beneficiaries, in violation of RPC 1.1(a), RPC 1.3 and RPC 1.4(a). In re Phillips, 127 N.J. 83 (1992). In issuing that discipline, the Court took into consideration the attorney's prior private reprimand for similar conduct. Similarly, in In re Dolan, 151 N.J. 324 (1997), the

Court reprimanded an attorney for grossly neglecting an estate matter and failing to communicate with the beneficiary of the estate. Here, while there is no allegation that respondent has failed to communicate with Phillips, he has grossly neglected this matter by failing to file the necessary accountings and to obey numerous orders issued by the court.

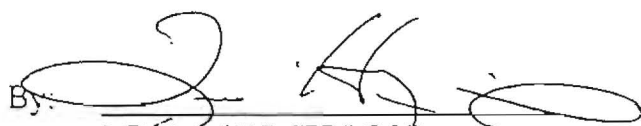
While a reprimand is generally adequate discipline for similar violations, because of respondent's prior admonition for failure to cooperate with the ethics authorities and because this is a default matter, the Board unanimously determined that he should be suspended for three months. Additionally, respondent's reinstatement should be conditioned on proof that he has filed a satisfactory accounting and that all necessary records have been presented to the OAE. Three members did not participate.

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

Dated: _____

4/5/95

By: _____



LEE M. HYMERLING

Chair

Disciplinary Review Board

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