

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-067

IN THE MATTER OF :
MICHAEL K. MULLEN :
AN ATTORNEY AT LAW :

Decision

Argued: May 14, 1998
Decided: December 11, 1998

Jeffrey Charney appeared on behalf of the District XII Ethics Committee.
Respondent waived appearance 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 on a recommendation for discipline filed by the District XII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1982. At all relevant times, he engaged in the practice of law in Morristown, Morris County. Respondent has no prior ethics history.

The complaint alleged violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) in connection with respondent's representation of the estate of his deceased grandmother, Gertrude Mullen. Respondent admitted all of the essential factual allegations through his answer to the complaint and his testimony at the DEC hearing.

In April 1994 respondent was retained to represent his grandmother's estate in the probate of the will, distribution of assets, preparation of tax returns and communication with the beneficiaries. On April 18, 1994 respondent advised the primary beneficiaries that the administration of the estate would be completed within approximately six months. By late 1994 certain beneficiaries were displeased with the apparent lack of progress in the matter. They included the grievant, Lawrence Mullen, who is respondent's uncle. The beneficiaries retained separate counsel to coax respondent to take action in the matter.

Respondent made partial distribution of the estate to various beneficiaries on February 18, 1995, and a final distribution to two other heirs on February 22, 1995. Further distributions were not made until one year later, February 19, 1996. Respondent acknowledged that, during this period of time, he ignored numerous faxes, phone and mail messages from Lawrence Mullen and others. Indeed, the record is replete with documentation on Lawrence's efforts to obtain information about the case and to urge respondent to complete the administration of the estate.

With regard to the charge of a violation of RPC 1.4(a), respondent stated that he communicated with some of the heirs of the estate, specifically his father, and that he ignored

the persistent inquiries of Lawrence Mullen. Respondent asserted that it was his uncle's personality that caused him to ignore otherwise reasonable requests for information about the matter.

Lawrence Mullen testified that the delay of two and one-half years between his mother's death and the final distribution cost him approximately \$20,000. Lawrence could not substantiate those losses, relying instead on his own calculation of his lost investment opportunity in the stock market. There is no claim of financial harm by any other beneficiaries.

Finally, respondent admitted that he did not act with due diligence and did not communicate with Lawrence to the extent required by RPC 1.4(a). Respondent did not make excuses for his misconduct. He described his workload at the time as overwhelming and his dedication to other family matters as more pressing than his grandmother's estate. Respondent conceded that he did not spend the time on the estate that it deserved.

The DEC found violations of RPC 1.3 and RPC 1.4(a) and recommended a reprimand.

* * *

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

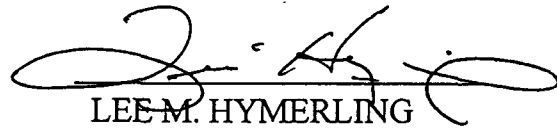
Respondent admitted the factual allegations contained in the complaint as well as the violations of RPC 1.3 and RPC 1.4(a). The record would support these findings even in the absence of respondent's admissions. Particularly compelling is the fact that Lawrence Mullen's numerous clear and pointed communications to respondent did not spark him into action. Undeniably, respondent violated RPC 1.3 and RPC 1.4(a), respectively, when he allowed the estate to languish for a period of at least one and one-half years and failed to communicate with Lawrence Mullen.

Ordinarily, an admonition is the appropriate degree of discipline for one isolated instance of lack of diligence and failure to communicate. In the Matter of Scott J. Marum, Docket No. DRB 95-273 (admonition imposed where the attorney failed to have his client appointed as legal guardian of a minor child in order that proceeds from a personal injury action could be disbursed. The attorney also failed to comply with the client's numerous requested for information) and In the Matter of Robert S. Miller, DRB Docket No. 95-307 (admonition imposed where the attorney failed to file a motion for visitation in a matrimonial matter and failed to return the client's telephonic requests for information.) Here, too, the Board found no reason to impose discipline greater than an admonition. Respondent was fully cooperative with the DEC and both introspective and forthright in his assessment of his own misconduct. He completed the estate without taking a fee and sent a letter to the beneficiaries apologizing for his shortcomings. Moreover, there is no proof that any real harm accrued to Lawrence Mullen or any of the other beneficiaries. For all of these reasons,

a five-member majority of the Board determined that an admonition is the appropriate discipline for respondent's misconduct. Three Board members would have dismissed the matter.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/1/98



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael K. Mullen
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Disposition: Admonition

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling				X			
Zazzali				X			
Brody				X			
Cole				X			
Lolla				X			
Maudsley					X		
Peterson					X		
Schwartz					X		
Thompson							X
Total:				5	3		1

By Robyn M. Hill 12/15/98
Robyn M. Hill
Chief Counsel