

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-274
District Docket No. XIV-2023-0234E

In the Matter of Mary F. Thurber
An Attorney at Law

Argued
February 15, 2024

Decided
May 3, 2024

Darrell M. Felsenstein appeared on behalf of the
Office of Attorney Ethics.

Joseph P. Castiglia appeared on behalf of respondent.

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Introduction

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Court's September 6, 2023 Order censuring respondent in connection with an Advisory Committee on Judicial Conduct (ACJC) proceeding brought against her in her capacity as a Superior Court judge.

The OAE asserted that, in the ACJC matter, respondent was determined to have violated the equivalents of New Jersey RPC 1.1(a) (engaging in gross neglect) and RPC 1.3 (lacking diligence).

For the reasons set forth below, we determine to grant the OAE's motion and conclude that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1986. From 1986 through February 2009, she maintained a practice of law in Bergen County, first operating as the Law Offices of Mary Thurber, and then as part of a law firm in which she and another attorney were partners.

In February 2009, respondent was appointed to serve as a judge of the Superior Court. She initially was assigned to the Family Division in the Hudson

County vicinage then, in May 2010, to the Bergen County vicinage. In March 2015, respondent was reassigned to the Civil Division, where she remains to date.

On July 15, 2023, respondent executed a disciplinary stipulation with the ACJC, conceding that she had violated Canon 1, Rule 1.1 of the Code of Judicial Conduct (requiring judges to observe high standards of conduct to preserve the integrity, impartiality, and independence of the judiciary); Canon 2, Rule 2.1 (requiring judges to avoid impropriety or the appearance of impropriety); and Canon 5, Rule 5.8 (prohibiting judges from serving as an executor, administrator, trustee, guardian, or other fiduciary).

On September 6, 2023, the Court accepted respondent's disciplinary stipulation and censured her for her misconduct. In re Thurber, 255 N.J. 321 (2023). Respondent was not barred from judicial office.

We now turn to the facts of this matter.

Facts

Prior to her 2009 judicial appointment to the Superior Court, respondent maintained a private practice of law, providing legal services to clients in various areas of the law, including estate planning, estate administration, and estate litigation.

In or around 1991, the executor of the Estate of Alfred Dopkus (the Dopkus Estate) retained respondent to administer that estate. Respondent probated Dopkus' will, administered the Dopkus Estate, and created a trust (the Dopkus Trust) for the benefit of the decedent's sister, Isabelle McKinley.

On March 24, 1998, McKinley died intestate. In or around April 1998, the trustee of the Dopkus Trust contacted respondent to discuss the probate of McKinley's estate (the McKinley Estate). No next of kin had applied to administer the McKinley Estate, and the only known relative was not an heir-at-law, lived in Florida, and did not want to serve. The successor trustee of the Dopkus Trust lived in upstate New York. It was necessary to appoint a representative for the McKinley Estate to permit the trustee to close the Dopkus Trust.

On August 31, 1998, following discussions with the Dopkus trustee and the decedent's attorney, respondent sought, and was granted, Letters of Administration from the Bergen County Surrogate. Accordingly, from June 1998 through December 2001, respondent, or employees of her law firm, provided legal services in connection with the administration of the McKinley Estate.

In February 2009, respondent was appointed to the Superior Court. At the time of her appointment, the McKinley Estate remained open, and respondent

had not yet satisfied her fiduciary duties to the estate, including withdrawing as counsel of record; filing a substitution of attorney; completing a search for heirs or conclusively establishing the existence of heirs; closing the estate bank accounts; disbursing estate proceeds; and filing an accounting with the court.

Between 2009 and 2022, despite her appointment to the bench, respondent continued to serve as fiduciary to the McKinley Estate and to perform fiduciary duties on behalf of the estate, including receiving and reviewing bank statements at her home address, which reflected interest income on a monthly basis; periodically reviewing the file; replying to inquiries regarding the status of the estate; and communicating with financial institutions that held estate proceeds.

On February 7, 2022, respondent retained Hunziker, Jones & Sweeney, P.A., (the Hunziker firm) to file an application with the court to discharge her as administrator of the McKinley Estate, to appoint a substitute administrator, and to file an accounting. On April 8, 2022, the court discharged respondent as administrator of the McKinley Estate.

On March 10, 2023, the court approved the first and final accounting submitted by the Hunziker firm, authorizing the payment of \$13,754.02 in legal fees to the Hunziker firm, as well as \$18,130.67 in fees respondent previously had received through her former law firm. The heir search submitted to the court by the Hunziker firm indicated that several heirs to the McKinley Estate

remained unknown or unlocated, confirmed the existence of five heirs, and identified seventeen unconfirmed heirs and additional potential heirs living overseas.

The Parties' Positions

The OAE asserted that respondent's unethical judicial conduct equated to violations of RPC 1.1(a) and RPC 1.3. Specifically, respondent violated RPC 1.1(a) and RPC 1.3 by failing to complete the administration of the McKinley Estate for more than twenty-four years. In support of its recommendation for either a reprimand or a censure, the OAE cited disciplinary precedent addressed below.

In her written submission to us, and during oral argument, respondent, through her counsel, noted that the basis for the reciprocal discipline was her violation of the judicial canons due to her failure to withdraw as administrator of the McKinley Estate after assuming judicial office. Thus, the gravamen of the offense for which she was disciplined was limited solely to her judicial conduct; namely, her failure to resign as administrator of the McKinley Estate upon her appointment to the bench. Accordingly, she maintained that places her in "a different posture from the usual disciplinary matter," where we recommend discipline for lawyers who commit ethical infractions in other jurisdictions, or

for judges whose conduct, while sitting as a judge, violated the Rules of Professional Conduct. Nevertheless, respondent conceded that, although she does not fall into either of those categories, the Court's Order bears upon her conduct as an attorney because it incorporated respondent's stipulation, in which she admitted having been dilatory in completing the McKinley Estate.

Respondent urged, however, that she handled her responsibilities as administrator "seriously and conscientiously." Respondent asserted that she was not neglectful of her duties and that she completed fiduciary acts for the estate, including identifying all assets; seeking recovery of escheated property from the State; opening estate accounts and reviewing account statements; executing documents to transfer assets; redeeming the decedent's savings bonds and depositing the proceeds; retaining an accounting firm to file tax returns; performing legal research; searching for potential heirs; hiring a service to clean out the decedent's home; engaging a company to assist with selling decedent's personalty; conducting searches for a will and heirs; reviewing financial records and preparing for a formal accounting; reviewing the decedent's financial documents; and negotiating an alternate approach for taxing the savings bond interest. Respondent also claimed that, by not closing the estate before conclusively finding an heir or heirs, she avoided funds escheating to the state and the potential of having to seek the return of such escheated funds.

Respondent further urged that, although her dilatoriness may provide the basis for finding that she lacked diligence, in violation of RPC 1.3, it does not necessarily follow that she also committed gross neglect, in violation of RPC 1.1(a). Indeed, respondent argued that, if a lack of diligence always equated to gross neglect, there would be no need for separate RPCs. Respondent also questioned whether the delay alone, when considering all the actions she took on behalf of the estate, was sufficient to support a finding that she violated RPC 1.1(a).

In urging discipline no greater than a reprimand, respondent cited disciplinary precedent where attorneys were censured based upon exacerbating factors that are not present in this matter. See, e.g., In re Finkelstein, 248 N.J. 573 (2010) (the attorney negligently misappropriated trust funds and committed recordkeeping violations; in addition, the attorney previously had been admonished and reprimanded for other violations); In re Goldsmith, 190 N.J. 196 (2007) (the attorney disobeyed a court order and failed to negotiate a check representing the proceeds of a real estate sale); In re Carlin, 188 N.J. 250 (2006) (the attorney committed recordkeeping violations and engaged in dishonest and deceitful conduct). Thus, respondent argued, in the absence of additional misconduct or other aggravating factors, enhanced discipline is unwarranted.

Respondent maintained that she took responsibility to administer an estate with minimal assets that no one else was willing to administer, in order to facilitate the completion of administration of the Dopkus Trust that had supported the decedent. She asserted that there was no self-dealing; no recordkeeping violations; no impropriety in managing the estate; and no deceit. Respondent also emphasized her “complete, honest, open cooperation” with disciplinary authorities, including “self-reporting as soon as it was suggested her conduct might have violated the Code of Judicial Conduct.”

Respondent emphasized her “unblemished and distinguished record as a practitioner for many years before becoming a judge.” After her clerkship, she gained a reputation as a “talented, capable attorney” until she was appointed to the bench. She served as a bar examination grader and examiner for more than fifteen years. She also devoted a substantial amount of time to volunteer work, including the following:

- Member, Chair, and Vice-Chair of the District IIA Ethics Committee;
- Trustee, Bergen County Bar Association; active participant on multiple committees (including judicial selection); General Council delegate to New Jersey State Bar Association;
- New Jersey State Bar Association – founding editor of newsletter for Construction and Public Contract Law Committee, instrumental in transition of that group from Committee to Section status, co-chaired Section;

- Member, New Jersey Supreme Court Civil Practice Committee;
- Member, New Jersey Supreme Court Committee on Evidence Rules;
- Volunteer lawyer for victims of domestic violence, through Alternatives to Domestic Violence (ADV);
- Continuing Legal Education – lectured and prepared/presented materials on myriad subjects;
- Volunteer co-leader and leader for Explorer Post for high-school students interested in careers in law, working with multiple other Bergen County attorneys; and
- Speaker at school career days regarding legal careers.

Respondent further highlighted her diligence and effectiveness as a Superior Court judge who has served in multiple divisions in the court and has been held in high regard throughout her judicial career. Respondent asserted that she is recognized for her integrity, as supported by the certification of Robert B. Hille, president emeritus of the New Jersey State Bar Association.

In view of her exemplary, nearly forty-year career, as a lawyer and then as a judge, in addition to the fact that, in her view, she has been adequately disciplined by the Court through the ACJC proceeding, respondent urged us to impose discipline, if any, no greater than a reprimand.

Analysis and Discipline

Motions for Reciprocal Discipline

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline. In New Jersey, judicial discipline serves as the basis for reciprocal attorney discipline. In accordance with R. 1:20-14(c), where a judge has been removed or disciplined pursuant to R. 2.14 or R. 2.15, those proceedings "shall be conclusive of the conduct on which that discipline was based in any subsequent disciplinary proceeding brought against the judge arising out of the same conduct." R. 1:20-14(c). In such circumstances, attorney disciplinary proceedings may be taken in accordance with R. 1:20-14(a)(2) through (5) and "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(2) and (3). See also In re Yaccarino, 117 N.J. 175, 183 (1989) ("determinations made in judicial-removal discipline proceedings are conclusive and binding in subsequent attorney disciplinary proceedings").¹

¹ Although R. 1:20-14(c) states that the judicial discipline proceeding "shall be conclusive of the conduct on which the discipline was based in any subsequent disciplinary proceeding," the Court has held that fairness to the attorney required it "to conduct a painstaking de novo reexamination of the underlying record, just as it does in other attorney disciplinary matters in which the initial hearing is held before a District Ethics Committee." In re Breslin, 171 N.J. 235, 240-41 (2002). The Court, in reaching this conclusion, reasoned that the standards of conduct implicated by the Code of Judicial Conduct are more generalized than the standards set forth in the Rules of Professional Conduct.

Like attorney disciplinary proceedings, New Jersey judicial disciplinary proceedings are subject to a clear and convincing standard of proof. R. 2:15-15(a). Here, respondent stipulated to her judicial misconduct via an application for discipline by consent, pursuant to R. 2:15-15A(b).

A disciplinary stipulation executed by a respondent judge and the ACJC disciplinary presenter shall contain “in detail the admitted facts regarding the unethical conduct, the specific ethical rules violated, a specific recommendation for, or range of, discipline, together with a brief analysis of the legal precedent.” R. 2:15-15A(b)(2). The ACJC may, following its review of the stipulation, “either grant the application and accept the recommendation, or deny the application. Following approval by the [ACJC], the matter shall be submitted to the . . . Court as an agreed upon disposition by way of application to impose discipline by consent with supporting documentation.” R. 2:15-15A(b)(3). The Court “may accept the tendered discipline by consent and enter an [O]rder of discipline with supporting documentation, to include any stipulations, affidavits, and other documents referenced in connection therewith.” R. 2:15-15A(b)(4).

In this matter, the ACJC granted the application for discipline by consent and recommended to the Court that respondent receive a public censure (with no permanent bar on holding or securing future judicial office). Thereafter, the Court accepted the tendered discipline by consent; publicly censured

respondent; and incorporated, by reference into its Order, respondent's stipulation of discipline by consent and supporting documentation.

Generally, reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

We conclude that subsection (E) applies in this matter because the unethical conduct established by the record warrants substantially different discipline. In our view, pursuant to disciplinary precedent, respondent's violations of the Rules of Professional Conduct warrant the imposition of a reprimand, and not the discipline (a censure) imposed in connection with the

judicial disciplinary proceeding, which is governed by different Rules and precedent than those governing attorney discipline in New Jersey.

Violations of the Rules of Professional Conduct

Turning to the charged violations, we determine that the record contains clear and convincing evidence that respondent violated RPC 1.1(a) and RPC 1.3.

RPC 1.1(a) forbids lawyers from handling matters entrusted to them in a manner that constitutes gross neglect. This Rule was designed to address “deviations from professional standards which are so far below the common understanding of those standards as to leave no question of inadequacy.” In the Matter of Dorothy L. Wright, DRB 22-100 (November 7, 2022) at 17 (citation and internal quotation omitted), so ordered, 254 N.J. 118 (2023).

RPC 1.3 further requires lawyers to act with reasonable diligence and promptness in representing clients.

In our view, respondent violated both RPCs by failing to perform, for more than twenty-four years, the work required to complete the administration of the McKinley Estate. Specifically, respondent failed to perform her fiduciary duties to the estate by not completing a search for heirs or conclusively establishing the existence of heirs; not closing the estate bank accounts; not disbursing the proceeds; not filing an accounting with the court; not withdrawing

as counsel of record; and not filing a substitution of attorney. Her prolonged failure to finalize the McKinley Estate deprived heirs of the timely receipt of their inheritance.

In sum, we find that respondent violated RPC 1.1(a) and RPC 1.3. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The discipline imposed on attorneys who grossly neglect, lack diligence, and fail to communicate with clients (a charge not present here) in connection with their handling of estate matters has ranged from an admonition to a censure, even when the misconduct is accompanied by additional, less serious misconduct. See, e.g., In the Matter of Andrew V. Zielyk, DRB 13-023 (June 26, 2013) (admonition; the attorney lacked diligence by failing to reply to a tax auditor's request for information, thereby delaying the completion of the estate's tax returns; the attorney also failed to keep the estate beneficiaries adequately informed, for a period of fifteen months, as to the status of the estate, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to set forth, in writing, the basis or rate of his fee (RPC 1.5(b)); no prior discipline in twenty-seven-year career); In re Burro, 235 N.J. 413 (2018) (reprimand; the attorney grossly

neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of \$40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case; to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand (now an admonition); in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); In re Trella, __ N.J. __ (2023) (censure; the attorney, despite his expertise in estate matters, stipulated that he had failed to timely administer two estate matters by not promptly paying inheritance taxes (RPC 1.1(a), RPC 1.3; and RPC 1.15(b)); the attorney also negligently misappropriated estate funds that should have been held in escrow (RPC 1.15(a)) and, in both estate matters, charged excessive fees (RPC 1.5(a)); in a third client matter, the attorney engaged in a conflict of interest by loaning funds to his client, and also made misrepresentations to the OAE with respect to the loan (RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c)); in imposing a censure, we concluded that the attorney's unblemished fifty-year-career was insufficient mitigation to warrant a downward departure from the baseline discipline of a censure given

the totality of the misconduct, spanning three client matters; we also weighed, in aggravation, the harm to the clients caused by the attorney's delay; last, we also considered, in aggravation, respondent's admission that he rarely entered into written fee agreements with his clients).²

Respondent's failure to administer the McKinley Estate spanned twenty-four years, a period that was significantly longer than that of the attorney in Zielyk, who received an admonition. Although respondent's misconduct occurred for a longer period of time than that of the attorney in Burro, who was reprimanded, respondent's misconduct did not result in direct client harm as in that case. Respondent's misconduct also was not accompanied by other serious RPC violations, such as the negligent misappropriation and conflict of interest found in Trella.

Here, respondent's mishandling of the McKinley Estate matter is similar to that of the attorney in Burro, who was reprimanded for his mishandling of a single estate matter. In that matter, the attorney failed to administer an estate for ten years, which resulted in the accrual of more than \$40,000 in interest and the imposition of a lien on the property belonging to the executrix. We considered,

² The additional cases cited by the OAE are in accord. See, e.g., In re Matter of David Leonard Roeber, DRB 12-057 (April 24, 2012) (admonition); In re Elsas, 198 N.J. 379 (2009) (reprimand); In re Yetman, 113 N.J. 556 (1989) (reprimand); In re Finkelstein, 248 N.J. 573 (censure); In re Goldsmith, 190 N.J. 196 (censure); In re Carlin, 188 N.J. 250 (censure).

in aggravation, that the attorney had a prior reprimand, as well as additional violations for his failure to communicate with the client, his failure to turn over the client file, and his failure to cooperate with disciplinary authorities. In determining that a reprimand was the appropriate sanction, we considered, in mitigation, that the attorney had suffered a stroke which resulted in him closing his law practice and had demonstrated remorse.

Respondent, like the attorney in Burro, failed to administer an estate in a single client matter. Unlike Burro, however, respondent did not violate any other Rules of Professional Conduct, and her misconduct did not result in direct client harm. However, respondent's delay in administering the McKinley Estate was significantly longer than what we addressed in Burro (ten-year delay) and, further, respondent's failure to act caused the heir search to be delayed for more than two decades.

Based upon applicable precedent, and Burro in particular, we conclude that the baseline discipline for respondent's misconduct is a reprimand. To craft the appropriate discipline, we also consider aggravating and mitigating factors.

In aggravation, respondent's inaction needlessly delayed the final administration of the McKinley Estate for more than two decades. In further aggravation, for thirteen years while respondent failed to administer the

McKinley Estate, she was a sitting Superior Court judge and, thus, was prohibited from engaging in such conduct.

In mitigation, respondent has an unblemished career of fourteen years of judicial service and has no prior discipline during her twenty-three-year career in private practice. Respondent also cooperated fully with the ACJC's and OAE's investigations; admitted her wrongdoing; entered into a disciplinary stipulation with the ACJC; and did not oppose the OAE's motion for reciprocal discipline, thereby accepting responsibility for her misconduct and conserving disciplinary resources.

Conclusion

On balance, when weighing respondent's misconduct in this matter against the compelling mitigating factors, we determine that a reprimand remains the appropriate quantum of discipline.

Chair Gallipoli was recused from the matter.

Member Joseph voted to impose a censure. In her view, respondent's inaction caused a twenty-four-year delay in locating potential heirs, see discussion supra pp. 4-5, thereby causing harm to those heirs who may have been entitled to a share of the estate.

Member Menaker voted to dismiss the charges of misconduct.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mary F. Thurber
Docket No. DRB 23-274

Argued: February 15, 2024

Decided: May 3, 2024

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Dismiss	Recused
Gallipoli				X
Boyer	X			
Campelo	X			
Hoberman	X			
Joseph		X		
Menaker			X	
Petrou	X			
Rivera	X			
Rodriguez	X			
Total:	6	1	1	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel