

Original

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: ILENE H. GOLDMAN

NUMBER: 03-DB-011

FILED REUSED DISCIPLINARY BOARD	
Date	Dec. 9, 2003
Clerk	R. Annunzio

REVISED RULING OF THE DISCIPLINARY BOARD

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This is a disciplinary proceeding based upon the filing of a Petition for Consent Discipline by Ilene H. Goldman, Respondent. The Office of Disciplinary Counsel ("ODC") has concurred in the matter. For the reasons stated below, the Board accepts the Petition and orders that a public reprimand, with special conditions, be issued against the Respondent.

PROCEDURAL HISTORY

On February 20, 2003, the Respondent filed her Petition for Consent Discipline, along with her Affidavit of Consent Discipline and her Waiver of Opportunity to Withdraw. On the same date, the Respondent and ODC filed a Stipulation of Facts. ODC's Concurrence in the Consent Discipline was also filed on February 20, 2003. On March 7, 2003, ODC filed its Memorandum in Support of Consent Discipline. This matter was considered by Panel "B" of the Disciplinary Board on May 22, 2003.

THE PETITION FOR CONSENT DISCIPLINE

In the Petition, the Respondent admits to violating Rules of Professional Conduct 1.1(a) (the duty of competence), 1.3 (the duty of diligence) and 1.7(a)(b) (conflict of interest). The Respondent proposes that she be issued a public reprimand with various special conditions as the appropriate discipline for the admitted misconduct. These special conditions include:

- a. Completion of an additional hour of ethics and professionalism within the same year her discipline becomes final;
- b. Completion of the Louisiana State Bar Association's Ethics School within six (6) months after her discipline becomes final;
- c. Completion of the Louisiana State Bar Association's Attorney/Client Assistance Program which includes good faith facilitation/mediation with Karen deLeon, particularly to resolve specific issues regarding the filing of succession income tax returns in connection with the Succession of Marijane Fritz Olivier, and any other pertinent issues necessary to fully resolve this matter;
- d. Remaining current in all her professional obligations such as disciplinary assessment, bar due, and M.C.L.E.;
- e. Refraining from any future misconduct and fully cooperating with any future disciplinary investigations; and
- f. Payment of the costs of these proceedings.

As noted above, ODC has concurred with Respondent's Petition.

STIPULATION OF FACTS

The parties' stipulation of facts include the following:

I.

Ilene H. Goldman was admitted to the practice of law on October 5, 1984.

II.

Ilene H. Goldman has no prior disciplinary record despite practicing for almost nineteen (19) years.

III.

In investigative file number 9987, Ilene H. Goldman represented the decedent Marijane Fritz Olivier in the preparation of a simple will approximately a year and a half before her death, and also in a few other matters before her death. Ms. Goldman met the decedent through decedent's daughter, Pamela Olivier Scruggs, whom she had represented over the years in several business related matters. The decedent died in 1994 and named Ms. Goldman as the attorney for the succession and appointed both her daughters and heirs, Complainant, Karen deLeon, and Ms. Scruggs as co-executors of the will. Both daughters agreed that Ms. Goldman could represent the succession. Ms. Scruggs was advised of a possible conflict and a waiver of conflict was executed with the understanding that Ms. Goldman did not represent Ms. Scruggs in the succession. Ms. Scruggs did not seek independent counsel but Complainant engaged counsel.

IV.

The succession was small in value so it was agreed that the succession would be handled without the appointment of a legal representative or executor. However, there was a history between the two heirs; they did not get along or speak to one another. By the terms of the will, Ms. Scruggs was to receive more in net value than that of Complainant and this caused even more conflict over the assets.

V.

The Complainant filed a complaint with the Office of Disciplinary Counsel alleging various ethical violations including delay in the completion of the succession and a conflict of interest. The Complainant was upset because it has taken over six (6) years to complete this relatively small succession and to file income tax

returns for the succession. The Complainant also noted that because Ms. Goldman had been Ms. Scruggs' attorney for years prior to the writing of the will, this gave rise to a potential conflict of interest from the very beginning of Ms. Goldman's involvement in the succession. Additionally, Complainant felt that Ms. Goldman favored Ms. Scruggs in the succession and continued to act as Ms. Scruggs personal and business attorney throughout the succession proceedings.

VI.

Ms. Goldman has insisted that she represented the succession and not either of the heirs, but in light of Succession of Wallace, "the succession" was not and could not have been her client because "the succession" is not person. The fact that Ms. Goldman believes that she represented "the succession" and not either of the heirs is evidence that she is not knowledgeable as to the reasoning of the Supreme Court in Succession of Wallace, and is in violation of Rule 1.1(a) of the Rules of Professional Conduct. Further, Ms. Goldman's role was not clear to any of the parties involved, not even herself, because the succession was not her client, there was no succession representative to serve as her client, Complainant was represented by independent counsel and Respondent denied representing Ms. Scruggs. There was an appearance of impropriety because Ms. Goldman appeared to have been negotiating the resolution of various disputes between the sisters by acting as an advocate for Ms. Scruggs, who did not have independent counsel in violation of Rule 1.7(a)(b) of the Rules of Professional Conduct. Where there are conflicts between and among heirs to succession matters and the only parties to the succession are the heirs and legatees, it is appropriate for the conflicting interests to be represented by independent counsel and this is what Ms.

Goldman should have adequately advised but she did not and continued in her role in violation of Rule 1.7(a)(b) of the Rules of Professional Conduct.

VII.

Ms. Goldman has been less than diligent in handling this succession and in fulfilling the role that she purports to be responsible for, attorney for “the succession,” when six years later or more, the income tax returns were not filed and the succession was not completed in violation of Rule 1.3 of the Rules of Professional Conduct. The ultimate responsibility fell on Ms. Goldman regardless of whether or not Complainant’s attorney agreed to undertake the preparation of the returns because assets of the estate were generating income over the course of the several years the matter remained pending. Additionally, Ms. Goldman did not act diligently by holding up the release of assets of the succession and failing to appoint a succession representative in order to obtain a fiduciary tax identification number and timely file the income tax returns in violation of Rule 1.3 of the Rules of Professional Conduct. The failure to see that the income tax returns were timely filed and that a fiduciary tax identification number was obtained timely implicate the duty of competence in accordance with Rule 1.1(a) of the Rules of Professional Conduct.

VIII.

Ilene Goldman’s conduct violated Rules 1.1(a) (the duty of competence), 1.3 (the duty of diligence) and 1.7(a)(b) (conflict of interest) of the Rules of Professional Conduct.

APPLICATION OF FACTORS CONSIDERED IN IMPOSING SANCTIONS

Respondent and ODC have agreed that Respondent has violated Rules 1.1(a), 1.3 and 1.7(a)(b). The Board must accept that Respondent has violated these rules. *In re Lieberman*, 95-2628 (La. 6/7/96); 675 So.2d 272. Given these violations, the Board is left to determine if the proposed sanction of public reprimand, with special conditions, is appropriate. Louisiana Supreme Court Rule XIX, Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

Here, the respondent violated a duty owed to Ms. deLeon and Ms. Scruggs, the co-executors of the will. Her conduct was negligent. Respondent's actions caused delay in the succession being completed and frustration to Ms. deLeon. However, her actions did not result in any permanent or serious harm to Ms. deLeon. The aggravating factor of substantial experience in the practice of law is present. Respondent was admitted to practice law in this State in October of 1984. Mitigating factors present include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) good faith effort to rectify consequences of her misconduct; (d) full and free disclosure to the disciplinary board or cooperative attitude toward proceedings; and (e) remorse.

ANALYSIS

The Louisiana Supreme Court also relies on the ABA's *Standards for Imposing Lawyer Sanctions* and case law to determine the baseline sanction. The ABA Standards suggest that a reprimand is the appropriate sanction. Standard 4.33 suggests that a reprimand is the appropriate sanction when a lawyer is negligent in determining whether the representation of a client will adversely affect another client and causes injury or potential injury to a client. Standard 4.43 suggests that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standard 4.53 suggests that a reprimand is appropriate when a lawyer demonstrates a failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client.

In its Memorandum in Support of Consent Discipline, ODC relies upon several cases, including the case of *In re Horne*, 98-2514 (La. 11/6/98); 721 So.2d 846 in support of the proposed sanction. In *Horne*, the Respondent was named as executor of the estate of Janice Baylous Kern, who died in 1988, and provided legal representation to the estate through his law firm. Respondent never completed the succession. He sold the decedent's home at a private sale and the remainder of the succession property was sold at auction. Respondent failed to return calls from the succession heirs, failed to act with diligence and competence, and failed to account to the heirs and provide them with a list of the estate's assets. He also failed to segregate the funds he collected and charged an excessive fee. *Id.* at 846-47.

Facing disciplinary proceedings, the Respondent forwarded to the heirs what he believed to be the balance of the succession funds and placed on the back of the checks language designed to be a full and complete release in his favor of any civil or disciplinary liability associated with his handling of the succession. He did not refer the heirs to independent counsel. He also provided misleading information to the Office of Disciplinary Counsel during its investigation of the matter. Moreover, the respondent had a prior disciplinary infraction, an admonition. *Id.* at 847.

Prior to formal hearing in this matter, the Respondent filed a petition for consent discipline proposing that he be suspended from the practice of law for a period of one year and one day, totally deferred, followed by a two year probationary period. Mr. Horne admitted to violating numerous Rules of Professional Conduct including Rules 1.1, 1.3, 1.4, 1.5, 1.8(a), 1.15, 1.16(d), 8.1, 8.4(a) and 8.4(d). ODC concurred in the petition. Ultimately, the Court concluded that the proposed discipline was appropriate. *Id.* at 847-48.

Comparing Ms. Goldman's misconduct to that of Mr. Horne, Ms. Goldman's misconduct warrants a public reprimand. Ms. Goldman has no prior discipline and cooperated with ODC during these proceedings. Fewer rule violations and less egregious conduct are involved in this matter than in Mr. Horne's case. ODC also points out in its Memorandum in Support of the Consent Discipline that a probationary period is not necessary in this matter. Ms. Goldman currently does not have an office or any active files. She does not intend to practice law any further and instead plans to work as a paralegal in the future.

ODC also relies on the cases of *In re Dunn*, 98-0535 (La. 6/5/98); 713 So.2d 461 and *In re Phelps*, 2002-1837 (La. 9/30/02); 827 So.2d 1140. In *Dunn*, the Respondent neglected his client's case for five (5) years, resulting in the suit dismissing on the grounds of abandonment. He also advised his clients about his malpractice and tried to settle directly with them. *Dunn*, 713 So.2d at 462. Respondent also had a prior disciplinary record and other aggravating factors were involved. The Court imposed a six month suspension, all deferred, along with a one year probationary period. *Id.* at 463-64. Here, Ms. deLeon's legal matter involved a succession, and despite the delay that she suffered, her claim has not prescribed. Additionally, unlike Mr. Dunn, Ms. Goldman never tried to settle this dispute with her client directly, even though she has admitted her misconduct. Ms. Goldman has dealt directly with Ms. deLeon's attorney. Also, as noted above Ms. Goldman has no prior discipline and only one aggravating circumstance is involved, her substantial experience in the practice of law.

Finally, in *Phelps*, the respondent admitted to violating the Rules of Professional Conduct by failing to properly communicate with his clients, failing to act with diligence in representing his clients, and failing to make reasonable efforts to expedite litigation. Seven separate instances of misconduct were at issue. ODC noted that respondent's misconduct caused frustration to his clients, but did not result in any permanent harm to them. *Phelps*, 827 So.2d at 1142. The respondent submitted a petition for consent discipline proposing that he be suspended from the practice of law for a period of one year and a day, but that his suspension be fully deferred and he be placed on supervised probation. The Court accepted the petition. *Id.* at 1143-44. Here, Ms. Goldman's matter does not involve a pattern of misconduct or multiple offenses nor does she have a

prior disciplinary record. Ms. Goldman's conduct involves an isolated incident of neglect.

Based on the above, the Disciplinary Board accepts the Petition for Consent Discipline and imposes a public reprimand upon the Respondent.

RULING

It is ordered that the Petition for Consent Discipline be accepted and that a public reprimand be issued against the Respondent, Ilene H. Goldman for her violations of the Rules of Professional Conduct. It is further ordered that as a part of the Respondent's sanction, the following special conditions also be imposed:

- a. Completion of an additional hour of ethics and professionalism within the same year her discipline becomes final;
- b. Completion of the Louisiana State Bar Association's Ethics School within six (6) months after her discipline becomes final;
- c. Completion of the Louisiana State Bar Association's Attorney/Client Assistance Program which includes good faith facilitation/mediation with Karen deLeon, particularly to resolve specific issues regarding the filing of succession income tax returns in connection with the Succession of Marijane Fritz Olivier, and any other pertinent issues necessary to fully resolve this matter;
- d. Remaining current in all her professional obligations such as disciplinary assessment, bar due, and M.C.L.E.;

- e. Refraining from any future misconduct and fully cooperating with any future disciplinary investigations; and
- f. Payment of the costs of these proceedings.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

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BY:


**DONALD R. BROWN
FOR THE ADJUDICATIVE COMMITTEE**