

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A	§	
MEMBER OF THE BAR OF THE	§	No. 620, 2011
SUPREME COURT OF THE	§	
STATE OF DELAWARE:	§	Board Case No. 2010-0178-B
	§	
MARTIN J. SIEGEL, ESQUIRE	§	
	§	
	§	

Submitted: December 5, 2011
Decided: February 13, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 13th day of February 2012, the Board on Professional Responsibility having filed its Report with this Court on November 16, 2011, pursuant to Rule 9(d) of the Rules of the Board on Professional Responsibility; and the Respondent and the Office of Disciplinary Counsel having filed no objections to the Board's Report; and the Court having reviewed the matter pursuant to Rule 9(e) of the Rules of the Board on Professional Responsibility,

IT IS ORDERED that the Board's Report filed on November 16, 2011 (copy attached) is hereby APPROVED. The matter is hereby CLOSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF DELAWARE

IN THE MATTER OF A MEMBER)	CONFIDENTIAL
OF THE BAR OF THE)	
SUPREME COURT OF DELAWARE)	Board Case No.
MARTIN J. STEGEL,)	2010 - 0178 - B
RESPONDENT)	

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**BOARD ON PROFESSIONAL
RESPONSIBILITY**

REPORT AND RECOMMENDATION ON SANCTIONS

A panel of the Board on Professional Responsibility consisting of Richmond L. Williams, Esquire, Chair, D. Benjamin Snyder, Esquire and Betsy Adams Holden conducted a Sanctions Hearing on September 26, 2011, regarding its findings of violation relating to the Petition for Discipline filed against Respondent in this matter. (The panel issued its Report and Recommendation on Liability on August 2, 2011). This is the Panel's Report and Recommendation following the Sanctions Hearing.

BACKGROUND

The Petition alleged that "Respondent engaged in professional misconduct in violation of Rule 1.1, Rule 1.3 Rule 1.4(a)(3), Rule 1.4(a)(4), Rule 1.15(b) and Rule 8.1(b) of the Delaware Lawyers' Rules of Professional Conduct" in connection with his handling of a personal injury matter involving Mary Lou Willis. Respondent denied that his conduct violated the Rules. Following the hearing on liability, the Panel found that the Respondent had violated the Rules as alleged in the Petition.

SANCTIONS

The Court is not bound by the Panel's findings regarding sanctions, but considers the Panel's recommendations in making its determination. The following is the Panel's recommendation after considering the circumstances of this matter.

In determining the appropriate sanction for lawyer misconduct, the Panel is guided by the ABA Standards for Imposing Lawyer Sanctions (1991 and Supp.1992) ("ABA Standards")¹:

The ABA framework consists of four key factors to be considered by the Court: (a) the ethical duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) aggravating and mitigating factors.

In addition, the Standards provide the following guidance for addressing multiple charges of misconduct:

The ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors (see Standard 9.22).

ABA Standards, at 11.

1. Respondent's Misconduct

The Respondent's misconduct involved his neglect of Willis' matter once a settlement had been reached with the insurance carrier and his failure to supplement his response to a subpoena issued by the Office of Disciplinary Counsel (ODC) after he learned that he had possession of responsive documents that he had not previously provided.

Specifically, the Panel found:

Rule 1.1. Respondent violated Rule 1.1 by failing to represent Willis' interest with the legal knowledge, skill, thoroughness and/or follow through necessary for the representation

¹ The Court has cited the ABA Standards with approval and consistently uses them as guidance in determining appropriate sanctions. *In re Bailey*, 821 A. 2d 851, 866 (Del. 2003).

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during the period beginning when he received the check until when the settlement proceeds were distributed, nearly 16 months later, and includes his failure to act prior to the check going stale.

Rule 1.3. (Acting with reasonable diligence and promptness in representing a client). Respondent violated Rule 1.3 by failing to distribute settlement funds, communicate with Willis, or return her calls in a timely manner.

Rule 1.4(a)(3). (Keeping the client reasonably informed about the status of the matter). Respondent violated Rule 1.4(a)(3) by failing to keep Willis informed of the status of her settlement with the insurer and, in particular, by failing to advise Willis that he had received the check.

Rule 1.4(a)(4). (Promptly complying with reasonable requests for information by the client). Respondent violated Rule 1.4(a)(4) by failing to comply with Willis' reasonable requests for information about the status of her settlement in January and February 2010.

Rule 1.15(d). (Promptly delivering to a client or third person any funds or other property that the client or third person is entitled to receive, and upon request by the client or third person, shall promptly render a full accounting regarding such property). Respondent violated Rule 1.15(d) by failing to distribute the funds due to Willis for approximately 16 months following receipt of the settlement check.

Rule 8.1(b). ("[A] lawyer in connection with ... a disciplinary matter, shall not: ... (b) fail to disclose a fact necessary to correct a misapprehension known by that person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information" from a disciplinary authority). Respondent violated Rule 8.1(b) when he failed to either supplement his response to the May 12, 2010 subpoena or advise ODC that his prior response was no longer accurate following his discovery that his email had been recovered contrary to his belief at the time of his initial response.

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Generally, the misconduct relating to the handling of Willis' matter after reaching settlement falls into the category of a lack of diligence, which is covered by ABA Standard 4.4.² Respondent's violation of Rule 8.1(b) falls within ABA Standard 7.0

2. Respondent's Mental State

Upon review of the circumstances surrounding Respondent's neglect of Willis' matter, including his failure promptly to inform Willis of the status of her case and disburse the settlement proceeds the Panel finds that Respondent's conduct was negligent. The negligence resulted from Respondent's failure to track and follow up on his ongoing obligations. Similarly, Respondent's failure to supplement his response to ODC's subpoena was a negligent failure to act.

3. Actual or Potential Injury

In the case of Willis, she was ultimately, but belatedly, provided the proceeds of the settlement. The actual injury is the time value of money, which Respondent mitigated by waiving his fee. Accordingly, we find there was little injury to the client. For the failure to supplement his subpoena response, the question is whether there was injury to a client, the public or the legal system as a result of his misconduct. An attorney's prompt, honest and complete response to a request for information from the Office of Disciplinary Counsel is essential for ODC effectively to investigate allegations of misconduct and, ultimately, enforce the Rules within the Delaware Bar. Respondent's failure to supplement delayed but did not ultimately deprive ODC of the information it was seeking. The Panel finds that Respondent's violation of Rule 8.1 (b) resulted in potential injury to the legal system.

² The Panel notes that other ABA Standards are also implicated: Standard 4.1 (failure to preserve client's property), Standard 4.5 (Lack of Competence), 4.6 (Lack of Candor). However, the analysis is similar under each.

4. Aggravating and Mitigating Circumstances

In reviewing the record, the Panel finds that the following aggravating circumstances are present: (a) prior disciplinary offenses; (b) multiple offenses; (c) vulnerability of the victim and (d) substantial experience in the practice of law. The Panel finds that the following mitigating factors are present: (a) absence of a dishonest or selfish motive; and (b) remorse.

DISCUSSION

The Panel is guided in its evaluation of this matter under the ABA Standards by the Court's decision in *In Re Elgart*, No. 376, 2010 (Del. August 3, 2010). *Elgart* is a case in which the Court imposed the sanction of a public reprimand and probation with conditions upon the Elgart under facts similar to those in the instant matter. The charges against Elgart are the same as alleged in the petition against Respondent in the instant case (alleging that Elgart failed to keep his client informed about the status of his matter for several years, failed to distribute settlement proceeds allowed the statute of limitations to run on one of his client's claims and failed to provide to ODC all of the information it sought pursuant to a subpoena).

ODC contends that *Elgart* is controlling and that the sanction imposed in that matter is appropriate in the present matter. Specifically, ODC seeks a public reprimand and probation of 18 months with conditions that need to be met during that period.

1. Respondent pay the costs of this proceeding.
2. Respondent cooperate fully with ODC in an expedited manner during the probationary period.
3. Respondent attend 12 hours of continuing legal education courses in law office management.
4. Respondent will at least monthly meet with a Delaware attorney, to be approved by ODC, and quarterly report to ODC regarding Respondent's compliance with the conditions of probation.

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Respondent suggests that Elgart's misconduct was more extreme and he (Respondent) should receive a private admonition. However, respondent does not object to the probation or the conditions of probation sought by ODC.

In comparing *Elgart* to the present matter, the Panel notes that Elgart's failure to communicate covered a longer period, more money was involved and he missed a statute of limitations, which was not part of the misconduct in the current matter. We note that they both failed to return calls at all and, apparently, had no effective way to identify the need to return calls or subsequently determine that calls had not been returned. Both Elgart and Respondent had prior disciplinary records. However, Elgart's prior discipline did not appear to be related to the subject of his public reprimand, even though it should have heightened his awareness of his ethical obligations.

The Panel finds that the Respondent's prior discipline is related in time and in subject matter to the present matter. Respondent's prior discipline involved a series of problems in a District Court of Delaware case, including his failure to respond to an order to compel production, failure to file briefs and the subsequent dismissal of that case for his failure to comply with that order. Respondent also failed to inform his client of the status of the case, including the motion to dismiss for failure to comply with the discovery order and the order of dismissal with prejudice. In that matter Respondent admitted to violations of Rule 1.1 (competent representation); 1.2 (consultation with client regarding her matter); 1.3 (reasonable diligence); and 1.4 (keeping a client reasonably informed). The private admonition observed that Respondent had undertaken "substantial remedial measures to prevent recurrence of the problems" in the underlying case. It also imposed probation with a period of two years. Those conditions included keeping an inventory of all civil litigation matters with an accurate synopsis of current status and pending activities and that this synopsis would be reviewed monthly by another attorney who would report Respondent's compliance with the conditions of probation to ODC. Respondent accepted these conditions on April 20, 2004. His probation ended April 20, 2006.

Willis retained Respondent for her matter approximately 16 months after completion of his probation. Sadly, had Respondent continued to follow the practices established as a condition

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of his first probation or maintained a heightened awareness of the circumstances under which his prior misconduct occurred, he would not have committed the misconduct that is the basis of the present matter.

The Panel finds that while the actual actions of Respondent in the present matter are not as egregious as Elgart's misconduct and tilts the scale in favor of a private admonition, the fact of a prior discipline that involves related misconduct and contained remedies that, if maintained, would have prevented the violations in this case, makes another private admonition inappropriate. Under these circumstances, the Panel believes a private admonition would not be sufficient to protect the public and foster public confidence in the Bar and judicial system. Accordingly, the Panel recommends that the Court impose the sanction of a public reprimand with probation to begin upon determination of sanctions by the Court and continue for 18 months after Respondent implements procedures and other appropriate safeguards that are designed to prevent recurrence of the violations found in this matter ("appropriate safeguards") after having obtained ODC's prior approval of such appropriate safeguards.³

The Panel recommends that the following conditions be imposed upon Respondent during probation:

1. Respondent shall pay the costs of this proceeding.
2. Respondent shall cooperate fully with ODC in an expedited manner during the probationary period.
3. Respondent shall attend 12 hours of continuing legal education courses in law office management.
4. Respondent will maintain in effect the appropriate safeguards (approved by ODC) and keep an inventory of all civil litigation matters (including matters for which he has been retained but not filed suit) with an accurate synopsis of current the status and pending activities for each matter.

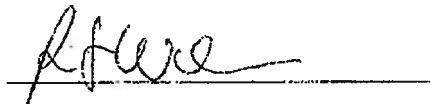
³ By way of example, and not of limitation, the appropriate safeguards should enable Respondent to: identify and track obligations relating to civil litigation (filed and unfilled), respond promptly to clients, courts and counsel and keep clients informed of the status of their matters. The appropriate safeguards should also include ways to track compliance and to rectify lapses in compliance.

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5. Respondent will meet monthly with a Delaware attorney to be approved by ODC who will review with Respondent his adherence to the appropriate safeguards and the synopsis of his civil matters (the Oversight Attorney). On a quarterly basis, the Oversight Attorney will report to ODC Respondent's compliance with the conditions of probation.
6. Respondent will pay the Oversight Attorney's reasonable fees for his activities under the probation.
7. Upon the expiration of the 18 month period, the Oversight Attorney will audit Respondent's civil litigation files from the period of probation and report to ODC on his findings related to the Respondent's consistency in following the appropriate safeguards. The audit will be based upon an audit plan to be proposed by the Oversight Attorney and approved by ODC.
8. Respondent's probation will terminate upon ODC's approval of the audit report as demonstrating substantial compliance with the terms of probation and proof of payment of all costs and fees required to be paid hereunder.

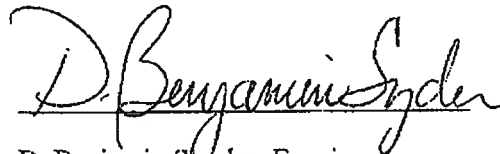
Failure to comply with the terms of probation may result in separate disciplinary action.

Board on Professional Responsibility



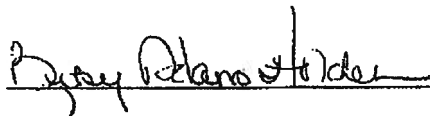
Richmond L. Williams, Esquire

Panel Chair



D. Benjamin Snyder, Esquire

Panel Member



Betsy Adams Holden

Panel Member

Date: November 15, 2011