

Private Admonition With Conditions - Board Case No. 52, 2001. Date of Sanction: January 17, 2002. A panel of the Preliminary Review Committee ("PRC") offered the sanction of a private admonition to an attorney in Board Case No. 52, 2001, for certain violations of the Delaware Lawyers' Rules of Professional Conduct (the "Rules"). The attorney consented to the imposition of the private admonition.

This disciplinary matter arose in connection with the attorney's representation of a client in legal matters involving an estate. After learning that her son-in-law (the "executor") had filed a will for probate with the Register of Wills, the client visited the attorney's office in December 2000 for an initial consultation regarding the estate. The client had in her possession a copy of a will (signed in 2000) which left the client a certain portion of her deceased husband's property upon his death. The client did not have in her possession an original will, and informed the attorney that she had not been able to locate one. The client did not know whether it was the 2000 will or another will which had been filed for probate. At the conclusion of the consultation, the attorney informed the client that the matter would be investigated by the attorney's office, by contacting the Register of Wills to determine whether the will that had been filed for probate was the 2000 will or another will. The attorney and the client differ as to whether the subject of the client's rights in the estate as a surviving spouse, including the six month deadline for claiming such rights, were discussed during the initial consultation.

Later that month, the attorney's staff obtained a copy of the will that had been filed for probate by the executor, which was a 1995 will which purported to disinherit the client. The client also obtained her own copy of the will directly from the Register of Wills. No further substantive action was taken by the attorney on behalf of the client. The original 2000 will was never located by the client. There were subsequent telephone calls from the client, during which estate-related issues were discussed with the attorney's staff. The attorney and the client differ as to whether the attorney discussed with the client on the telephone her rights as a surviving spouse. In April 2001, the attorney sent her first and only written communication to the client, which was a letter containing the following language:

Since my last communication with you the demands of routine office practice ha[ve] grown considerably and I do not have sufficient time to devote to your matter. Accordingly I can no longer offer my legal services to you. I would suggest that you contact [names of two attorneys] to represent your interests in the probate of this Estate.

No communication was made to the client, either by the attorney in the April 2001 letter, or by the attorney's staff, as to the urgency of the client's obtaining counsel to protect and preserve her legal rights in the estate and avoid disinheritance. The client did not obtain legal advice from another attorney about the estate until after the June 2001 deadline for action had already passed, and was unable to claim the rights of a surviving spouse in the estate.

Rule 1.4(b) states that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 1.16(d) states, in part, that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests." The attorney violated Rule 1.4(b) by failing reasonably

to explain to the client her legal rights in the estate as the surviving spouse, including in particular by failing, in the letter to the client terminating the representation, to inform the client about the urgent need for prompt action to protect her legal rights in the estate as the surviving spouse. The attorney's failure to inform the client in the termination letter about the urgent need for prompt action also violated Rule 1.16(d).

In assessing whether the sanction of a private admonition with conditions should be offered to the attorney in this matter, the PRC considered the client's loss of legal rights in the estate as a surviving spouse, as well as the following aggravating and mitigating factors. In aggravation: (1) the attorney's public disciplinary record; and (2) the attorney's substantial experience in the practice of law. In mitigation: (1) the absence of a dishonest or selfish motive; (2) the fact that the client was given written notice of termination almost two months prior to the expiration of the deadline to claim her legal rights as a surviving spouse, and was given the names of other attorneys she could contact; and (3) the attorney's recognition of the need to implement a consistent system for using written non-engagement and disengagement letters that are suitable to the particular circumstances in a legal matter. The PRC also considered that the attorney had not been previously disciplined for conduct involving deficiencies in communications with clients.

The PRC offer that was accepted by the attorney included the following conditions:

(1) The attorney shall consult with a member of the Delaware State Bar Association's Professional Guidance Committee ("PGC") within 30 days after the date of the sanction; cooperate with the PGC member in undertaking a comprehensive review of the attorney's law office management practices and policies; and confirm in writing to the ODC within 45 days after the date of sanction that this consultation has taken place, and explain the recommendations that have been made by the PGC member;

(2) The attorney shall implement the recommendations made by the PGC member to improve the attorney's law office management practices and policies, and provide the ODC with a written status report confirming the implementation of these recommendations by no later than 90 days after the date of sanction; and

(3) The attorney shall reimburse the ODC for the costs of its investigation, pursuant to Procedural Rule 27.