

IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member	§	
of the Bar of the Supreme Court	§	No. 104, 2006
of the State of Delaware,	§	
	§	Board Case No. 28, 2005
A. GARY WILSON,	§	
	§	
Respondent.	§	

Submitted: April 26, 2006

Decided: May 9, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 9th day of May 2006, in consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. On February 24, 2006 the Board on Professional Responsibility (“Board”) filed a Report in this disciplinary matter recommending that Respondent be placed on probation, with conditions, for a one-year period. On March 16, 2006 the Office of Disciplinary Counsel (“ODC”) filed an objection to the Board’s recommendation, seeking instead an eighteen month suspension, with conditions.

2. The Respondent filed a response to the Objections on April 11, 2006 contending that the recommendations of the Board should be adopted by the Court.

3. Respondent has admitted failure to act with reasonable diligence and promptness in the probate of over twenty estates; failure promptly to deliver to a third party funds that that party was entitled to receive from an estate; failure to

place fiduciary funds in an interest-bearing account; and engaging in conduct prejudicial to the administration of justice by failing to probate over twenty estates.

4. Respondent was admitted to the Bar in 1973. His practice includes domestic relations, criminal matters, real estate, business, wills, personal injury actions and until recently, estates. For approximately thirty years, he never received a disciplinary sanction.

5. In late 2002 or early 2003, Respondent came to the attention of the Board and the ODC after he failed to make several mandatory filings regarding a particular estate with the Register of Wills and failed to make any distributions to the residuary beneficiary. The Register of Wills scheduled several hearings on a Rule to Show Cause in the Court of Chancery, and Respondent failed to comply with the Court of Chancery's order to complete the estate administration.

6. On September 11, 2003 the ODC issued a Private Admonition, setting forth three conditions for Respondent to comply with. First, Respondent was required to have a mentor and to issue monthly reports with the ODC. Second, it was suggested that Respondent make full use of the Professional Guidance Committee and prepare and maintain a complete list of all open legal matters, including deadlines, due dates, and obligations. Third, Respondent was required to timely probate another separate estate.

7. On February 18, 2005, Respondent had provided the ODC with a list of six open cases, but as of June 10, 2005, an audit by the Lawyers' Fund for Client Protection ("LFCP") revealed twenty-four open cases. Of those cases, Respondent had failed to file a timely accounting for approximately twenty open estates. The LFCP found that Respondent did not intend to omit any cases when he submitted the list of only six open cases.

8. Respondent failed to meet the conditions set out in his September 11, 2003 Private Admonition. Accordingly, on November 9, 2005, this Court approved the Board's Report recommending a three-fold sanction: (1) a public reprimand; (2) a permanent restriction precluding estate practice; and (3) several conditions including (a) cooperation with the ODC regarding the immediate offenses, (b) cooperation with the ODC and Lawyer's Fund for Client Protection regarding other matters, and (c) payment of costs incurred by the ODC and LFCP (*e.g.*, audits).*

9. Based on evidence presented at a December 14, 2005 hearing, the Board concluded that Respondent is able to stay current and to meet deadlines with respect to his domestic, criminal, and other practice areas. The Board further

* *In re A. Gary Wilson*, Del. Supr., No. 477, 2005, 886 A.2d 1279 (Nov. 9, 2005).

concluded, however, that Respondent exhibits pathological procrastination in conducting his estate practice, in part because that practice is less structured and the deadlines are not as strict. Finally, the Board found that Respondent did not intentionally prolong any estate matters, nor did he personally gain from their remaining open.

10. Respondent failed to distribute approximately \$50,000 to beneficiaries of one particular estate (Bogle) for over sixteen years, and may have been prodded to action only by the LFCP audit or the ODC investigation. For much of that time, the funds of that estate were kept in a non-interest bearing account, and at times were at risk of escheating.

11. In addition to that estate, Respondent admits his failure to act with reasonable diligence and promptness in probating twenty-two other estates. That admitted conduct constitutes violations of Rules 1.3, 1.15(b), (d), and (f), and 8.4(d).

12. Respondent disputes the Board's finding that by failing to provide competent representation in connection with the twenty-two miscellaneous estates, plus the Bogle estate, Respondent violated Rule 1.1. The Board concluded, however, that the finding of a Rule 1.1 violation was warranted because Respondent failed to probate the estate in a timely manner. Respondent also denies that he knowingly disobeyed the publication of the rules of the tribunal,

which would constitute a violation of Rule 3.4(c). The Board concluded, however, that by failing to probate the estates, Respondent knowingly disobeyed the tribunal. Finally, Respondent denies that he knowingly provided false information to the ODC in violation of Rule 8.1(a). The Board concluded, however, that Respondent was aware that the ODC was investigating his estate practice, was aware of the Bogle Estate because he transferred its funds in February 2005 before preparing an inventory of open cases for the ODC, and therefore either knew or should have known that he was withholding information.

13. The Board recommends that Respondent be placed on probation with conditions for one year. The ODC disputes only one of the Board's recommendations: the one year probation. The ODC recommends at least eighteen months suspension, emphasizing Respondent's "extensive pattern of knowing misconduct" and disciplinary record. Both the record and our prior precedents lead us to conclude that the ODC's recommendation is the more appropriate sanction in these circumstances.

NOW, THEREFORE, IT IS ORDERED that:

1. The Respondent is suspended from the practice of law in the State of Delaware for eighteen months from the date of this Order.
2. During the period of suspension, the Respondent shall conduct no act directly or indirectly constituting the practice of law including the sharing or

receipt of any legal fees. The Respondent shall also be prohibited from having any contact with clients or prospective clients or witnesses or prospective witnesses when acting as a paralegal, legal assistant, or law clerk under the supervision of a member of the Delaware Bar, or otherwise.

3. The Respondent shall comply immediately with the directives of Rules 21 and 23 of the Delaware Lawyers' Rules of Disciplinary Procedure ("Procedural Rules"). The Respondent shall also arrange with another member or members of the Delaware Bar to protect the interests of his clients during the period of suspension. The Respondent also shall file with the Court and serve on the Office of Disciplinary Counsel by no later than 10 days after date of this Order an affidavit of compliance pursuant to Rule 23(b) of the Delaware Lawyers' Rules of Disciplinary Procedure, co-signed by the lawyer who has undertaken the arrangement.

4. If Respondent fails to comply with the requirements set forth in paragraph 3, the ODC is authorized to petition the Court of Chancery for the appointment of a receiver for the Respondent's law practice pursuant to Rule 24 of the Delaware Lawyers' Rules of Disciplinary Procedure.

5. The Respondent shall pay the costs of these disciplinary proceedings, pursuant to Rule 27 of the Delaware Lawyers' Rules of Disciplinary Procedure.

6. This Order shall be disseminated by Disciplinary Counsel in accordance with Rule 14 of the Delaware Lawyers' Rules of Disciplinary Procedure.

BY THE COURT:

/s/ Jack B. Jacobs
Justice