

IN THE MATTER OF JONATHAN MILLER,
Respondent.
File No. DP-237/82

Argued: November 22, 1983

Decided: February 14, 1984

OPINION OF THE BOARD

Respondent failed to adequately communicate with the interested parties in a probate estate in which he had been appointed special administrator. The probate estate remained open for 4 years and the delay in closing the matter prompted many inquiries from the client. In an attempt to satisfy the client, Respondent misrepresented that status of the estate, characterizing it as "closed" when technically it was not. Respondent also incorrectly indicated to the Grievance Administrator that the estate taxes had been paid prior to the filing of the Grievance Administrator's request for investigation. The hearing panel dismissed the complaint. The Board finds that Respondent did make a material misrepresentation regarding the status of the probate estate and imposes a discipline of reprimand.

The Board does not conclude that Respondent's misrepresentations were made to conceal improper or negligent conduct or to further any personal or pecuniary interest of the Respondent. Rather, a review of the entire record discloses that Respondent apparently made these misrepresentations to put a very anxious client at ease and with the belief that Respondent had taken almost all steps necessary for entry of a final order by the probate court. In addition to accepting Respondent's explanation in this regard, the Board finds that substantial weight should be given to the fact that Respondent has a long, unblemished record of professional practice.

Regardless of the marginal nature of the offense here, the Board reiterates the caveat that misrepresentation to a client could warrant severe discipline in the context of different circumstances. Respondent argues that the probate matter was "substantially" completed. He may have considered his inaccurate characterizations and communications to be insignificant - and therein lies the danger. Indeed, in communicating with clients and disciplinary agencies, more than mere accuracy is required. "[T]he failure to disclose all relevant facts and information known by an attorney to his or her client has traditionally been regarded as a breach of an attorney's ethical obligation." (Emphasis added.) *In re Estes*, 212 NW2d 903, 909 (1973). "[A] Respondent shall fully and fairly disclose" in an answer to the request for investigation "all the facts and circumstances pertaining to his alleged misconduct . . ." GCR 1963, 962.1.

While the Respondent misrepresented only the technical status of the probate estate, he clearly falls short of the applicable standards, and stands duly warned accordingly. The Board is persuaded that Respondent now has an improved understanding of the professional standards bearing on this issue and finds that the essential purpose of these proceedings - protection of the public, the courts and the legal profession [GCR 1963, 954] - is served by imposition of a reprimand.

Vice-Chairperson Shecter concurs in the findings of the Board but dissents on the question

of discipline and would impose a suspension.