SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-302
District Docket Nos. XIV-06-095E,
XIV-06-096E, XIV-06-482, and
XIV-06-483E

IN THE MATTER OF	:
DAVID J. WITHERSPOON	:
AN ATTORNEY AT LAW	:

Dissent

Argued: April 16, 2009

Decided: July 23, 2009

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Bernard K. Freamon appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

We concur with our fellow members in the majority on all aspects of their decision, save one – discipline. For the following reasons, we believe that a six-month suspension is required for respondent's misconduct in this matter.

Respondent's misconduct here involved four separate women, at a very vulnerable time in their lives – while under bankruptcy protection. The fourth woman was merely accompanying her father to respondent's office. It was committed over a five-year period between 2001 and 2006. With respect to some of the women, it occurred on more than one occasion. As stated by the majority, "respondent offered discounts, fee refunds – even free motion-practice – in hopes of receiving sexual favors." Yet, for all of it, there is no hint of contrition.

Respondent's lack of contrition predates this matter. After having been admonished in 2002 and reprimanded in a default matter in March 2003, respondent was back before this Board in the fall of 2003 for failing to communicate with municipal tax appeal clients, because he found it too time-consuming and cost-prohibitive to do so.

At oral argument before us, respondent stated,

> I didn't design my practice to just ignore clients, but when clients sign agreements for a tax appeal, in the agreement it says the client agrees to have the attorney file a tax appeal, so I felt I don't have to call them; they know I'm filing a tax appeal.

> They can call me if they'd like a copy of the appeal.
>
> [T11.][1]

Respondent left the impression that an occasional grievance from an uninformed client was a small price to pay for not having to incur the added costs involved in providing information to hundreds of his clients.

Thus, in our October 24, 2003 admonition letter, we stated, "the Board cautions you to re-think your practice of not sending clients copies of appeals and cross-appeals in these matters, or risk more severe discipline in the future." But respondent paid no heed.

On February 13, 2008, respondent received a censure for identical misconduct in a tax appeal. In our decision, we stated:

> That respondent did not learn from his prior mistakes is troubling to us. Indeed, in mid-2003, when he agreed to represent the Kanys, he had just received his reprimand, which was based, in part, on his failure to communicate with clients. Furthermore, in November 2003, when the Kanys complained to respondent about his lack of communication with them, he had just received the October 24, 2003 admonition for failure to

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[1] "T" refers to the transcript of the October 16, 2003 oral argument before us.

> communicate with clients in yet another tax appeal matter.
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> [In the Matter of David J. Witherspoon, DRB 07-171 at 16 (December 17, 2007).]

Respondent's refusal to learn from his past mistakes and blame-shifting takes on new meaning to us, now that he has, in the four matters that we know of, repeatedly offered to trade legal services in exchange for sex, alongside other less serious misconduct.

He still doesn't "get it" here, where his lecherous conduct toward female clients and a client's daughter is obvious and indefensible. Respondent blames others.

It was incredibly egotistical for respondent to suggest, as he did, that ethics authorities should not question his morals, because "morals are a very subjective matter." It was pure condescension for him to declare that his Constitutional right to freedom of speech trumped those of his clients – apparently including their right to be treated with dignity and respect by their attorney. It was arrogance that compelled him to blame the discipline system for failing to provide him with "strict" rules "on what we [attorneys] can talk about and not talk about," because "too many [ethics] rules" are "generalities."

Looking back on respondent through the lens that he has provided to us, we conclude that he is out of touch with the reality of his situation as an attorney of this state. His reaction to this and to prior disciplinary matters indicates both arrogance and a lack of moral values that reflect poorly on the legal profession. Respondent needs a louder message – a six-month suspension – to help him reflect upon these most recent, and repugnant, acts.

Bonnie C. Frost, Esq.
Vice-Chair

Jeanne Doremus
Member