SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-213

IN THE MATTER OF

JAMES H. WOLFE, III

AN ATTORNEY AT LAW

Decision

Argued: November 15, 2001

Decided: March 6, 2002

Virginia A. Lazala appeared on behalf of the District VB Ethics Committee.

Respondent did not appear for oral argument.

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

This matter was before us based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"). The three-count complaint charged respondent with violations of RPC 1.1, presumably (a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client reasonably informed about the status of a matter), RPC 1.4(b) (failure to explain the matter to the extent reasonably necessary to permit client to make informed decisions about representation), RPC 1.15(b) (failure to promptly notify clients of receipt of settlement funds or to promptly deliver settlement proceeds), RPC 3.2 (failure to

expedite litigation) and RPC 8.4(a) (violating the Rules of Professional Conduct) (count one); RPC 8.1 presumably (b) (failure to respond to lawful demands for information from a disciplinary authority) (count two); and RPC 1.1(b) (pattern of neglect) (count three).

Respondent was admitted to the New Jersey bar in 1979. He maintains an office in Orange, New Jersey.

This is respondent's fifth encounter with the disciplinary system. In 1998, he was admonished for failing to advise his clients of the status of their matters, in violation of RPC 1.4(a). In the Matter of James H. Wolfe, III, Docket No. DRB 98-098 (April 27, 1998). He received a reprimand in 2001 for violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client). In re Wolfe, 167 N.J. 277 (2001). He also received a three-month suspension in 2001 for violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client reasonably informed about the status of the matter) and RPC 8.1(b) (failure to cooperate with ethics authorities). In re Wolfe, 167 N.J. 278 (2001). Finally, respondent was reprimanded in 2001 for a violation of RPC 1.4(a) (failure to communicate with client). In re Wolfe, 170 N.J. 71 (2001).

In May 1996, the grievants in this matter, Darryl Murray and his twin sisters, Bernice and Denice Murray, retained respondent to represent them in connection with a personal injury matter arising from a car accident that occurred on May 2, 1996. The three were passengers in an automobile driven by their sister Lana Murray. Lana was represented by separate counsel.

By letter dated December 30, 1996, respondent asserted personal injury claims against the driver of the other vehicle, who was insured by National Consumer Insurance Company

("National Consumer"). Respondent also filed personal injury protection ("PIP") claims on behalf of the grievants and an uninsured/underinsured claim in Darryl's behalf, all with Lana's insurance carrier, Liberty Mutual Insurance Company ("Liberty Mutual").

The demand letter to National Consumer sought settlements in the amount of $22,500 for Darryl Murray and $15,000 each for Denise and Bernice Murray. Respondent did not consult with his clients prior to making a settlement demand on National Consumer but he claimed, the demand was made based on his experience as a personal injury lawyer, rather than on the amount of available insurance coverage. According to respondent, his clients could decide whether to accept or reject the offer. After some letters and discussions with the company, respondent received a settlement offer in August 1997.

Ultimately, the grievants accepted the offer and executed releases to the insurance company. The settlement totaled $21,500. The grievants agreed to divide the monies equally among themselves, even though Darryl's injuries were more serious. Darryl agreed to the equal division because he was also pursuing an underinsured motorist claim against Lana's insurance company.

In September 1997, respondent received the settlement checks from National Consumer, each in the amount of $7,250. After depositing them in his trust account, he withdrew his attorney fees and costs but did not send the grievants a "partial settlement" of approximately $800 each until October 1998. According to respondent, he had informed them that he was holding the remainder of the settlement monies in his trust account until he could determine if the medical expenses had been paid. This was corroborated by Darryl's and Denise's testimony.

In October 1997, respondent had obtained affidavits of non-insurance from the grievants. Thereafter, he filed PIP claims with Liberty Mutual. According to respondent, Liberty Mutual took a long time to conduct its investigation because of issues involving automobile insurance maintained by other members of the household.

According to respondent, he had discussed with the grievants the option of filing suit, but recommended PIP arbitration instead because, in his experience, it would be faster. Thereafter, in April 1998, respondent filed for arbitration with the American Arbitration Association ("AAA"). An arbitrator was appointed in June 1998.

From that time until April 2000, three different attorneys represented Liberty Mutual in the matter. Although respondent attempted to move the case along, Liberty Mutual's actions delayed the proceedings. Finally, in August 2000, Liberty Mutual was ordered to pay the grievants' medical bills. It did not, however, make the payments.

Respondent had also filed an underinsured motorists' benefit claim against Liberty Mutual in December 1997. Despite respondent's efforts to have the insurer use the information in its files, the claim remained pending as of the date of the DEC hearing.

Darryl testified that he recalled that he and respondent had at least seven meetings, that respondent had warned him that the case would take a while to resolve, that respondent advised him of the expected recovery amount, that he and respondent discussed the status of the case on numerous occasions and that respondent told him that the balance of the settlement would be held in his trust account until the medical bills were paid.

While Darryl always believed that respondent was working on his case, he admitted that he filed the grievance because he had not received his money and because he was dissatisfied with the way respondent was handling the case.

Denise Murray testified that most of her communications with respondent took place at the YMCA, where she and her sister worked and where respondent was a member. Denise, too, understood that respondent was holding the balance of the settlement funds in his trust account, until the medical bills were paid. Like Darryl, she recalled receiving correspondence from respondent and going to his office approximately five times during the course of the representation.

Eventually, the Murrays retained a new attorney. Respondent forwarded the file to the new attorney on December 17, 2000, as well as a copy of an order to show cause that he had prepared for the Murrays' signature, to compel Liberty Mutual to pay the outstanding medical bills.

* * *

The second count of the complaint charged respondent with failure to respond to a lawful demand for information from the disciplinary authorities. At the DEC hearing, respondent admitted that it took him two months to reply to the grievance. Respondent's answer to the complaint is dated three months after the date of the complaint. The record is silent, however, on the date of service of the complaint. Respondent's answer contained only cursory responses to the allegations, omitting any factual explanations. Respondent also failed to forward to the

investigator his complete file. Finally, the DEC scheduled this matter for a peremptory hearing on January 25, 2001. At that time, counsel for respondent requested an adjournment because he had just been retained and because he had a conflict on that date. The hearing was temporarily adjourned until later that afternoon.

* * *

Count three charged respondent with a pattern of neglect. It alleged that respondent had been disciplined in 1988 for similar conduct. Respondent denied the allegation. The complaint also charged that several matters were pending before the Court. Respondent denied these allegations as well.

* * *

The DEC did not find clear and convincing evidence of violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15, RPC 3.2 or RPC 8.4(a). The DEC concluded that, although the matter had been pending for a long period, respondent's handling of the case was acceptable. The DEC attributed part of the delay to confusion over insurance coverage in the household.

Also, the DEC did not find that respondent's failure to turn over the partial disbursement to the grievants for approximately one year, after receipt of the settlement, violated any

disciplinary rule. As to respondent's prior acts of misconduct, the DEC did not consider any cases that were pending review by the Supreme Court and did not find a violation of RPC 1.1(b).

The DEC concluded, however, that respondent failed to cooperate fully with the DEC investigation by delaying his reply to the investigator's requests for information, failing to turn over a complete file and failing to file an answer that was a full and complete disclosure of the facts relevant to the charges, as required by In re Gavel, 22 N.J. 248 (1956). The DEC particularly underscored respondent's denial of the existence of the pending disciplinary matters. Also, the DEC labeled as egregious respondent's attempt to "leverage an adjournment and delay the hearing by retaining counsel who had represented him in two prior ethics matters, just prior to the hearing and then not advising the panel until the actual commencement of the hearing."

The DEC, thus, concluded that respondent failed to cooperate with the investigation of the matter, in violation of RPC 8.1(b). The DEC recommended a reprimand.

* * *

Following a de novo review of the record we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC found no clear and convincing evidence that respondent's conduct rose to the level of gross neglect, lack of diligence or failure to expedite litigation. We agree. Respondent took action in connection with his clients' claims and was able to obtain a settlement from the

tortfeasor's insurance carrier. Thereafter, the hurdles he encountered in pursuing the PIP and underinsured motorist claim were not of his making.

Similarly, we found no evidence that respondent violated RPC 1.4(a) or RPC 1.4(b). The record established that respondent conferred with his clients about whether to pursue litigation or arbitration. Here, however, Liberty Mutual stonewalled the arbitration. Both Darryl and Denise testified about conversations, meetings and correspondence from respondent throughout the course of their matter. There is, therefore, no evidence that respondent failed to reasonably communicate with his clients for any significant time period.

In addition, we found no clear and convincing evidence that respondent unnecessarily delayed the disbursement of the balance of the settlement. There is no dispute that the grievants were advised that, before the final disbursement, the medical bills had to be satisfied. There is no evidence that respondent was in any way responsible for this delay. We, therefore, dismissed the charge of a violation of RPC 1.15(b).

We also dismissed the allegation that respondent was guilty of a pattern of neglect because, as of the date of the DEC hearing, the pending matters on which the complaint relied still had not been decided by the Supreme Court.

Although we found no improprieties in connection with respondent's handling of grievants' case, it is undeniable that respondent failed to cooperate with ethics authorities in their handling of this disciplinary matter. Generally, when a respondent has submitted a reply (albeit late) to the grievance, has answered the complaint and has participated at the DEC hearing, we do not find such a violation. Part of the problem here, however, lies with the cursory responses

in respondent's answer. He merely answered either "ADMIT" or "DENY" to the twenty-six paragraphs of the complaint, without providing any facts to corroborate his responses. Moreover, the third count of the complaint referred to respondent's prior and pending matters, alleging that they dealt with similar conduct. Charges of this sort require precise and specific facts supporting the denial of the allegations of the complaint. Respondent denied all of the allegations in the third count. While it is possible that his denial referred to the "similar conduct" language, a fair reading of his answer would lead to the conclusion that he had no history of discipline.

Because respondent is no stranger to the ethics process (this is his fifth brush with the ethics system), he should be well aware of the requirements of R.1:20-4(e). The rule states that "[t]he respondent's answer shall set forth (1) a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint. . . ." See also, In re Gavel, 22 N.J. 248 (1956).

Generally where an attorney has prior discipline and fails to cooperate with disciplinary authorities, a reprimand is sufficient discipline. See In re Medinets, 154 N.J. 255 (1998) (reprimand where attorney failed to cooperate with the investigation and processing of grievance); In re Burnett-Baker, 153 N.J. 357 (1998) (reprimand where attorney failed to cooperate during the investigation and processing of grievance; attorney had prior discipline, including a private reprimand and a three-month suspension); In re Fody, 148 N.J. 373 (1997) (reprimand where attorney failed to cooperate with district ethics committee and had an ethics history).

We do not view respondent's lack of cooperation, in light of his obvious awareness of his duty to comply with R.1:20-4(e), indulgently. Therefore, seven members voted to impose a

reprimand. One member believed that a three-month suspension more adequately addressed respondent's transgressions, given his ethics history. One member did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James H. Wolfe, III
Docket No. DRB 01-213

Argued: November 15, 2001

Decided: March 6, 2002

Disposition: Reprimand

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman		X					
Schwartz							X
Wissinger			X				
Total:		1	7				1

Robyn M. Hill 3/20/02
Robyn M. Hill
Chief Counsel