SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-249

IN THE MATTER OF

LOIS ANNE WOOD

AN ATTORNEY AT LAW

Decision

Argued: October 17, 2002

Decided: January 24, 2003

Joan Josephson appeared on behalf of the District VII Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline filed by the District VII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1983. In 1997 she received an admonition for a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities). In the Matter of Lois A. Wood, Docket No. DRB 97-134 (July 25, 1997).

We originally considered this matter in September 2000, as a default (DRB 00-230). The complaint alleged that respondent, as the managing partner of her law firm, had permitted funds from employees' paychecks to be deducted for health coverage, although the health insurance policy for the office had lapsed. The complaint also alleged that there were chronic bookkeeping errors in the law firm, causing employees' paychecks to be returned for insufficient funds.

Prior to our September 2000 review of the matter, respondent filed a motion to vacate the default, which we denied. We dismissed the underlying ethics charges, however, for lack of clear and convincing evidence that respondent was responsible for the firm's financial matters. Nevertheless, we found a violation of RPC 8.1(b) for her failure to cooperate with disciplinary authorities and determined to impose a reprimand.

On May 29, 2001 the Office of Attorney Ethics ("OAE") filed with the Court a petition for review, alleging that it did not have an opportunity to investigate the new allegations contained in respondent's briefs to us and that the word "manage" contained in the complaint meant necessarily that respondent was responsible for the firm's financial matters.

On July 5, 2001 the Court granted the OAE's petition for review, vacated our decision and remanded the matter to us for reconsideration of respondent's motion to vacate the default, this time with the benefit of the OAE's response to respondent's new allegations. On reconsideration, on September 13, 2001, we determined to remand the entire matter to the

DEC for a hearing. The matter is now before us after the DEC's hearing on remand.

* * *

The first count of the complaint charged respondent with violations of RPC 8.4(c) (fraud, dishonesty, deceit or misrepresentation), RPC 1.15(b) (failure to promptly deliver to the client or third person funds or other property the client or third person is entitled to receive)[1] and RPC 8.1(b) (failure to cooperate with disciplinary authorities).[2]

According to the complaint, Holly Peterson was a secretary at respondent's law firm, Lewis and Wood, of which respondent was the managing attorney. In January 1999 the law firm began deducting weekly co-payments for Aetna health insurance, which the firm provided to its employees. However, when Peterson tried to use the insurance to pay for a doctor's visit the following month, she was informed that her policy had been cancelled the month before.

On February 26, 1999 Peterson wrote to respondent requesting an explanation for the insurance situation. Peterson also requested reimbursement for her insurance contributions. Respondent replied to Peterson, informing her that she would receive coverage from another carrier, AmeriHealth, effective March 15, 1999.

The complaint alleged that AmeriHealth could not verify Peterson's coverage and that

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[1]Mistakenly cited as RPC 1.15(h).

[2]Cited in the complaint as a violation of R. 1:20-3(g)(3).

Peterson had to pay the full cost of the doctor's visit. Thereafter, the law firm made several more deductions from Peterson's paychecks on account of health insurance.

The complaint also alleged that respondent was responsible for the return of a March 19, 1999 paycheck to Peterson, which was dishonored by the bank.

The second count of the complaint charged respondent with violations of RPC 8.4(c), RPC 1.15(b)[3] and RPC 8.1(b)[4]. According to the complaint, between April 1998 and March 1999, fifteen paychecks made payable to Dorothy Jewell, another employee at the law firm, were returned for insufficient funds. Ultimately, Jewell filed a criminal complaint against respondent, the details of which are not in the record. The ethics complaint also alleged that, as soon as the criminal complaint was served on respondent, Jewell was discharged from the law firm. There is no evidence in the record related to this allegation.

Finally, the complaint alleged that Jewell, too, had sums deducted from her paychecks for Aetna health insurance, although her coverage had already been terminated in February 1999, retroactive to January 1, 1999.

Both Jewell and Peterson were unavailable to testify at the DEC hearing. Jewell had moved out of state and could not be located. Peterson's whereabouts were known, but apparently she declined to testify.

Respondent was the sole witness at the DEC hearing. As to the allegations that she

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[3]Mistakenly cited in the complaint as RPC 1.15(h).

[4]Cited in the complaint as a violation of R. 1:20-3(g)(3).

was responsible for "bounced" payroll checks to Peterson and Jewell, respondent testified that in early 1999 the law firm had four offices. At about that time respondent took over the role of managing attorney, previously performed by her father. There were four offices in three states at the time. Respondent stated as follows:

> Initially, I was like the little Dutch child trying to put my finger in the dikes and keep things from exploding.... It was a horrific experience, with four offices in three states, and I hadn't been involved in management before, the issues hit me faster than I could deal with them and I feel that I am just now starting to get on top of everything, and mainly by attrition.

Respondent worked in the Trenton office, while Peterson and Jewell worked in the Manasquan/Brielle office. According to respondent, she was not in charge of the finances in any of the offices during this time. Respondent testified as follows:

> At the time the setup was that there was – our overall office manager for all the offices, Doug Muraglia, he was in charge of the payroll account, he coordinated between the four offices, he signed all the checks, he had an outside payroll company that actually determined the amounts, did whatever they do to post them.
> In addition, he – each office had an office manager, and the Manasquan or Brielle office, the shore office where these two worked, my mother was actually the administrator, office manager.
> In addition, there was a managing attorney down there, a Lou Scalzo; in the Philadelphia office the managing attorney and office manager were the same, Mark Vergillo. The office manager and managing attorney were the same, Daniel Morton.

According to respondent, each satellite office maintained its own business account, from which deposits to a central payroll account for all of the offices would be made on a weekly basis. Apparently, after Peterson's and Jewell's checks bounced, it was found that the office manager from the satellite office had been tardy in depositing funds into the central

payroll account. Although the central payroll had sufficient funds on deposit to cover all outstanding checks, some funds had not "cleared" yet and were considered uncollected funds. Therefore, several paychecks drawn on uncollected funds were returned, but later honored upon re-submission. Respondent produced copies of Peterson's and Jewell's cancelled paychecks, which had initially been returned and were later honored by the bank. In any event, according to respondent, she had never been in charge of payroll at the law firm and had no knowledge of the bounced checks until a memorandum from Peterson dated April 1999. Respondent testified that her mother, Lois M. Wood, administered the payroll account during this time. She also testified that, once she became aware of the situation, she took appropriate action to remedy it. There is no evidence in the record that anyone at the law firm had advance notice that the funds in the payroll account were insufficient to cover the checks.

Respondent also testified about the allegations that she had deducted money from Peterson's and Jewell's paychecks for non-existent healthcare coverage:

> Miss Jewell used her health insurance for over a year, Miss Peterson was just added in January of the applicable year. Generally it takes three or four months for the insurance company to add them, even though they charge us for them; they would proactively [sic] charge it.
>
> Ms. Jewell – no, Miss Holly Peterson, I don't know whether she was able to confirm coverage or not, we paid for it; in fact, they still owe us a refund.
>
> At some point in February of the applicable year Ms. Jewell started telling people that the office had cancelled the health insurance, which was not true, their health insurance was maintained in the same – well, the same basic scheme, in a way. Mr. Muraglia's prior experience being – before being the office manager, was insurance for about 20 years, he handled all the firm's insurance needs.
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> * * *

> The agent advised that he agreed with our analysis but that it was not something that could be resolved within a couple of days and that we would be in the position where we would end up being cancelled retroactively, while we were working out the problem, which would leave people without health insurance. His suggestion was to fight that battle another day, get bound with another health carrier, which was done, and that was effective March.
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> For the period of February, eventually – the end of February retroactive cancellation was received retroactive to January or – I'm not positive, the end of January, I think.
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> During the month that there was no insurance due to a retroactive cancellation for premiums we had paid, we treated it as self-insured and we paid all bills of any employees that incurred any bills in that time period.

* * *

The DEC dismissed the allegations of the complaint, citing "a lack of competent evidence," with the exception of the charge that respondent failed to cooperate with the DEC's investigation of the grievances and failed to answer the formal ethics complaint. The DEC also noted that, in admitting her failure to cooperate with the DEC, respondent characterized it as technical in nature, thereby minimizing the seriousness of her misconduct. The DEC rejected that characterization and noted, as an aggravating factor, respondent's earlier admonition for similar conduct. The DEC recommended a reprimand for respondent's failure to cooperate with disciplinary authorities.

* * *

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

For the reasons expressed below, the DEC correctly dismissed the charges of

violations of RPC 1.15(b) and RPC 8.4(c).

Although the complaint alleged that respondent was responsible for the firm's financial matters, respondent testified that she was not in charge of that aspect of the firm's administration. At the time in question, she claimed, she was in the process of taking over the management responsibilities of the law firm, formerly performed by her father. She testified that her mother was in charge of the payroll account. We found credible respondent's uncontroverted testimony that she was not personally responsible for that aspect of the firm's operation. Arguably, respondent could have been held responsible, under RPC 5.3, for the conduct of other employees — presumably the office managers — in charge of payroll and health insurance issues. For instance, if the office had repeatedly retained health insurance deductions without providing health coverage and had kept those funds, then this conduct – for which respondent might be ultimately responsible – might have constituted dishonesty, in violation of RPC 8.4(c) or, at a minimum, failure to safeguard employees' funds (to the extent that they are not applied to the purpose for which they were intended), in violation of RPC 1.15(b). Here, however, there was only a one-month period when the law firm was without health coverage for its employees, through no discernible fault of the firm. In fact, no one was aware of the lapse in coverage until after its occurrence. The insurance provider made a retroactive determination in that regard. Under the facts of this case, we found no dishonesty or failure to safeguard employees' funds on the part of respondent. Therefore, we dismissed the allegations of violations of RPC 8.4(c) and RPC 1.15(b).

As to the payroll checks, again, there is no clear and convincing evidence that respondent was either personally responsible for the lack of sufficient funds or, in the alternative, for the office manager's conduct, under RPC 5.3. There is no evidence that respondent — or any other employee — knew or should have known that there were insufficient funds in the payroll account to fund the weekly payroll. Under these circumstances, we could not find that respondent's conduct constituted fraud, dishonesty, deceit or misrepresentation.

On the other hand, there is clear and convincing evidence of respondent's failure to cooperate with ethics authorities. Respondent admitted at the DEC hearing that she failed to reply to numerous requests for information about these grievances and failed to file an answer to the original ethics complaint. Moreover, respondent had no plausible explanation for her inaction in that respect. Therefore, we found a violation of RPC 8.1(b).

A sole violation of RPC 8.1(b), where the attorney has no prior ethics history, ordinarily results in an admonition. In the Matter of Grafton Edgar Beckles, II, Docket No. DRB 01-395 (December 21, 2001); In the Matter of Donald R. Stemmer, Docket No. 98-394 (April 11, 2000); and In the Matter of Arnold Abramowitz, Docket No. 97-150 (July 25, 1997). Because, however, respondent previously received an admonition for failure to cooperate with ethics authorities, sterner discipline is required. See, e.g., In re Devin, 172 N.J. 321 (2002) (reprimand for attorney who ignored five requests for information from the DEC, before finally filing a late answer to the ethics complaint; the attorney offered no

excusable basis for his misconduct and had been previously disciplined for failure to cooperate with ethics authorities); In re Fody, 148 N.J. 373 (1997) (reprimand for attorney who failed to cooperate with a district ethics committee during the processing of an ethics matter; the attorney had been previously reprimanded in 1995 for the same misconduct and had been temporarily suspended from the practice of law for failure to cooperate with a district ethics committee and failure to account for estate funds); and In re Macias, 121 N.J. 243 (1990) (public reprimand for failure to cooperate with the OAE by not properly certifying that recordkeeping deficiencies, found during a random audit, had been corrected). Because this is the second time that respondent has failed to cooperate with ethics authorities, we unanimously determined to impose a reprimand.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Lois Anne Wood
Docket No. DRB 02-249

Argued: October 17, 2002

Decided: January 24, 2003

Disposition: Reprimand

Members	*Disbar*	*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:			9				

Robyn M. Hill 2/3/03
Robyn M. Hill
Chief Counsel