SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-434

IN THE MATTER OF

SCOTT WOOD

AN ATTORNEY AT LAW

Decision

Argued: February 6, 2003

Decided: April 8, 2003

Melissa A. Czartoryski waived appearance for oral argument on behalf of the District IIIB 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 based on a recommendation for discipline filed by the District IIIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1988. On February 24, 1999 he received an admonition for failure to communicate with a client in a matrimonial matter. In

* As a rule, we require the presenter's appearance for oral argument, even when the respondent has waived appearance. We determined to consider the matter without oral argument, however, because of the completeness of the record before us.

the Matter of Scott Wood, Docket No. DRB 98-462. On November 21, 2000 he received a reprimand in a default matter for lack of diligence and failure to communicate with his client in two matters. In re Wood, 165 N.J. 564 (2000).

The complaint alleged violations of RPC 1.1(a) (gross neglect) and RPC 1.4(a) (failure to communicate with the client).

* * *

In August 1999 Joy Conti, the grievant, retained respondent to file an appeal in a New Jersey case involving a judgment obtained by her New York matrimonial attorney, Bruce Willner, against her ex-husband. The New Jersey case sought to levy against Mr. Conti's account with the National Auto Dealers Exchange ("NADE") for unpaid spousal support. Willner had represented Conti in her divorce and in various post-judgment matrimonial motions, since about 1990.[1]

Shortly after his retention, respondent filed a notice of appeal. The matter proceeded apace from late August into November 1999.

On November 9, 1999 respondent, Conti and Willner attended an unsuccessful settlement conference for that purpose at the Appellate Division in Trenton. On November 11, 1999 respondent sent Conti a letter stating that the court would issue a scheduling order

[1]Willner testified at the DEC hearing that he knew no New Jersey attorneys who handled appellate work and had obtained respondent's name from a local bar association.

in the case, and that he would be filing the required appellate brief.

Willner testified that after November 1999 respondent ceased all communications with Conti. Willner stated that Conti periodically visited him at his New York office for assistance in obtaining information about the case. According to Willner's cellular telephone records, he placed calls to respondent's office on April 25, October 26 and October 31, 2000. Willner recalled making other calls to respondent from his office telephone, but had no record of those calls because his service provider did not itemize them.

According to Willner, he was never able to speak with respondent, only his receptionist. On one occasion he was told that respondent was with a client and would return his call shortly. Respondent never did. On another occasion, the receptionist told him that respondent would "get the file" and return his call. Again, respondent never returned the call.

Finally, on April 5, 2001 Willner wrote the following:

> Although Mrs. Conti and the writer have telephoned you many times in the past, and I personally, at her request, called you on April 3rd, being advised by your secretary that you would get the file and return my call, to date have not heard from you.
>
> The last communication from you, was a letter to Mrs. Conti dated November 12, 1999, to the effect that Mr. Bush had not received a reply from his client with regards to a possible settlement. Certainly, if any offer of settlement has been made, you failed to notify Mrs. Conti of same.
>
> Nor have you advised the outcome of the pending appeal, which should have been decided by now. In the event the appeal was denied, surely Mrs. Conti should have been advised of same and informed as to whether she might pursue her claim to a higher court.

Because respondent did not reply to his letter, Willner continued, in August 2001 he

called NADE's attorney, who told him that the appeal had been dismissed in March 2000. On August 29, 2001, Conti and Willner drove to Trenton to obtain a copy of the dismissal order. On August 31, 2001 Willner "faxed" the order to respondent, along with another letter stating as follows:

> As you are aware, this office represents Mrs. Conti, and once again, on her behalf, am [sic] attempting to contact you. On Wednesday, August 29, you failed to take my call, nor have you returned same.
>
> On Wednesday, Mrs. Conti and the writer learned for the first time that her appeal was dismissed by reason of your failing to file a timely brief. A copy of said order is enclosed.
>
> Kindly advise when Mrs. Conti may arrange to pick up a copy of her file, and also advise the name, address and telephone number of your malpractice insurance carrier so that she my [sic] pursue her claim for your negligence in failing to properly pursue her appeal.
>
> Your failure to respond [] will be deemed an admission of all of the facts stated herein.

Respondent never replied to that letter.

Conti also testified that the appeal progressed smoothly until after the November 9, 1999 settlement conference. According to Conti, she heard nothing from respondent after that letter. Conti also claimed that she and Willner made numerous unsuccessful attempts to obtain information from respondent.

On cross-examination, Conti was asked about an apparent discrepancy contained in her grievance, namely, that respondent had sent her a letter requesting that she not call him about the case. Conti admitted that she received no such letter from respondent. In the grievance she also claimed that she never received a copy of the signed retainer agreement.

At the hearing, Conti admitted that she had received it. Finally, Conti failed to disclose in her grievance an April 6, 2000 letter from respondent, which stated as follows:

> Please be advised that I have not yet received a notice from the Court scheduling any further hearings. As soon as I am in receipt of any Court dates, I will be in contact with you immediately.

On May 22, 2001 Conti filed the ethics grievance.

Respondent, in turn, denied any wrongdoing. He contended that he spoke often to Conti and informed her of important events in the case. He produced several letters (drafted early in the case) to support his contention, including a November 12, 1999 letter to his adversary at NADE, a November 15, 1999 letter to the Appellate Division clerk's office and a November 24, 1999 letter to Conti.[2] Respondent conceded that he did not communicate with Conti between late November 1999 and April 6, 2000, when he informed her that he was still awaiting a scheduling order from the court. Respondent recalled that it was an April 4, 2000 call from Conti that prompted that letter.

Respondent also denied any knowledge of Conti's and Willner's attempts to contact him between April 2000 and May 2001. Those communications included Willner's April 25, October 26 and October 31, 2000 telephone calls, for which he had records, and Willner's April 5, 2001 letter. He could not explain why he did not receive those communications. He denied experiencing any clerical problems that could have accounted for missing mail or telephone messages.

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[2]Conti denied receiving any of these letters from respondent.

Respondent also denied neglecting the matter. Rather, he claimed that he handled it "very professionally." He tacitly blamed the Appellate Division for his ignorance of the March 27, 2000 dismissal, maintaining that it may have been sent to a wrong address. In support of that contention, he furnished the DEC with a letter that he had received from the Finance Unit of the Superior Court Clerk's Office in Trenton. That letter had been sent to him at 129 High Street in Mount Holly. His address was 29 High Street, a block away. Respondent speculated that the Appellate Division might have sent its March 27, 2000 dismissal to the wrong address. He did not, however, test that theory by checking with the court, nor did he produce any evidence to support his contention.[3] In any event, respondent obviously received the Superior Court's misdirected mail on the single occasion mentioned by him. Presumably, then, he would have received the dismissal order even if it, too, had been sent to him at 129 High Street.

As to why he never called the Appellate Division for the status of the appeal, respondent replied that the Appellate Division "takes its own time" to process appeals. Respondent thought that it was reasonable to wait five months for the scheduling order. Therefore, respondent testified, when Conti contacted him in April 2000, he was not alarmed that the file contained no scheduling order. Instead, he wrote to Conti that he was awaiting a scheduling order and then gave the file back to his secretary for filing. Respondent did not contact the Appellate Division in April 2000 to determine the status of the appeal. According

[3]The DEC believed it less than candid on respondent's part that only when pressed did he reveal at the hearing that the 129 High Street address was within a block of his office and that both of

to respondent, for the next thirteen months he took no action because the file "fell through the cracks" in the case-tracking system in his office.[4]

Respondent testified that he handled about three appeals per year and was familiar with New Jersey appellate practice. Yet, when asked why he never contacted the court about the status of the case, he offered an explanation only for the last few months of the representation, stating that, once he received the grievance in June 2001, he believed that it acted as a termination of the representation. Respondent admitted, however, that he took no steps to inform Conti or anyone else of his belief in that regard. According to respondent, he became aware of the dismissal for the first time in August 2001, when Willner sent him a copy of the dismissal order.

Respondent acknowledged receipt of Willner's August 31, 2001 letter demanding both the file and information about his malpractice insurance carrier. He admitted that he did not reply to that letter, primarily because it came from Willner, who, he claimed, was Conti's "boyfriend." As such, respondent considered the letter threatening. There is no evidence in the record to support respondent's assertion about Willner.

* * *

The DEC found a violation of RPC 1.1(a) for respondent's failure to prosecute the

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his partners, one of whom is his wife, had previously practiced law at 129 High Street.

[4]Respondent testified that he had taken corrective measures to prevent any recurrences.

appeal and his failure to take action to reinstate it, once he became aware of the dismissal. The DEC found no clear and convincing evidence of failure to communicate and, thus, dismissed the charge of a violation of RPC 1.4(a). The DEC recommended the imposition of a reprimand.

* * *

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.

Respondent grossly neglected Conti's appeal. He allowed it to be dismissed in March 2000 for failure to file a brief. Thereafter, he took no steps to reinstate the appeal. Respondent claimed that he had not received a scheduling order or an order of dismissal. True or not, nothing absolved him of his obligations to his client. Even though we generously gave respondent the benefit of the doubt for having taken no action in the months from late November 1999 to April 2000 because, as he put it, five months was a reasonable time to wait for a scheduling order, he could not explain his subsequent failure to take action on the appeal. Indeed, he admitted that, from April 2000 through June 2001, he forgot about the case because it "fell through the cracks." For all of these reasons, we found that respondent's failure to properly prosecute Conti's appeal violated RPC 1.1(a).

Unlike the DEC, we found clear and convincing evidence of respondent's failure to communicate with Conti. Both Willner and Conti testified that on numerous occasions they

tried to obtain information from respondent, to no avail. Willner produced telephone records and correspondence to respondent that went unanswered. On the other hand, respondent testified that he did not receive telephone messages left with his secretary, as well as Willner's April 5, 2001 letter. Although it is possible that respondent's secretary did not transmit Conti's messages to him, the records produced by Willner show that those calls were made. We noted also, that respondent allowed months at a time to pass, thirteen months in one instance, without a single communication with Conti. We, therefore, found that respondent failed to communicate with Conti, in violation of RPC 1.4(a).

Ordinarily, an admonition or a reprimand is sufficient discipline where there is gross neglect in an appellate representation, even if other violations, such as lack of diligence and failure to communicate, are present. See, e.g., In the Matter of Lenora E. Marshall, Docket No. DRB 01-207 (September 26, 2001) (admonition for attorney who filed a notice of appeal from a criminal conviction, but failed to file an appellate brief, thereby causing the dismissal of the appeal; the attorney's misconduct constituted lack of diligence and failure to communicate with the client); In the Matter of James A. Key, Jr., Docket No. DRB 95-418 (February 20, 1996) (admonition for attorney who failed to correct deficiencies in a civil appeal, resulting in its dismissal, and failed to inform his client of the dismissal; in a second matter, the attorney permitted a civil complaint to be dismissed for lack of prosecution and failed to inform his client of the dismissal); In re Stalcup, 140 N.J. 622 (1995) (reprimand for failure to perfect an appeal and to so inform the client; the attorney also failed to withdraw from the representation when her services were terminated); and In re Russell, 110 N.J. 329

(1988) (reprimand for failure to file an appellate brief, resulting in the dismissal of the matter, and for improperly withdrawing from the representation).

In aggravation, we considered that respondent has twice been disciplined for conduct that included gross neglect and failure to communicate with clients, earning him an admonition in 1999 and a reprimand in November 2000. Indeed, his misconduct here continued even after the imposition of the reprimand. Therefore, five members determined that a reprimand is warranted. Two members would have imposed a three-month suspension. Two members did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Scott Wood
Docket No. DRB 02-434

Argued: February 6, 2003

Decided: April 8, 2003

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:		2	5				2

Robyn M. Hill 4/10/03
Robyn M. Hill
Chief Counsel