

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-106

---

IN THE MATTER OF  
MARILYN E. STERNSTEIN  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:

Decision of the  
Disciplinary Review Board

Argued: June 21, 1995

Decided: October 23, 1995

John McFeeley, III appeared on behalf of the District IV Ethics Committee.

Angelo J. Falciani appeared on behalf of respondent.

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

This matter was before the Board based upon a recommendation for discipline filed by the District IV Ethics Committee (DEC), arising out of two matters. In both the White and Karczewski matters, respondent was charged with a violation of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 3.2 (failure to expedite litigation) and failure to cooperate with the DEC (mistakenly cited as a violation of R.1:20-3(f) and RPC 8.4(d), instead of RPC 8.1(b)). Respondent was also charged with a pattern of neglect, in violation of RPC 1.1(b) (mistakenly cited as RPC 1.1(D)), when these two cases and an earlier matter were considered in concert. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1980. During

the time period relevant to the within matters, she was engaged in practice in Audubon, Camden County, as an associate with the law firm of Jacoby and Meyers.

Respondent was privately reprimanded by letter dated August 2, 1993, for gross neglect, lack of diligence, failure to communicate with her client and failure to cooperate with the ethics system, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b), respectively.

The White Matter (District Docket No. IV-94-01E)

Sometime in 1992, Michael White retained respondent to represent him in connection with a divorce proceeding. The matter was scheduled for trial on January 28, 1993. On that date, Mr. White waited in a conference room in the courthouse, while respondent and counsel for Mrs. White, James H. Waller, Esq., conferred in an attempt to resolve outstanding issues. At some point, respondent spoke with Mr. White and informed him that certain issues had been resolved and that he would be divorced as of that day. Respondent then left the room and Mr. White mistakenly thought he was free to leave the courthouse, which he did. The proceedings were, however, not concluded and, despite respondent's attempt to obtain a postponement, they continued in Mr. White's absence. For reasons not entirely revealed by the record, the judge dismissed Mr. White's complaint and ruled in favor of Mrs. White on her counterclaim. The court directed Mr. Waller to place on the record the issues that had been settled as

well as the issues that were still the subject of negotiation. As to the latter, respondent agreed to contact her client and discuss with him Mr. Waller's proposals. The court gave respondent thirty days to interpose any objections, lest the proposed settlement terms become final. Lastly, the court instructed respondent to submit a final judgment of divorce.

Respondent did not submit any objections within the thirty-day period following the court's determination on January 28, 1993. She also failed to prepare the final judgment, a task that she conceded would have taken approximately a half-hour. Respondent explained that, because of certain events in her practice, she did not have the time to prepare the judgment. Specifically, she had a busy trial schedule and, as a result of the closing of another Jacoby and Meyers office, in mid-March she had been given 400-500 files to review, 150-200 of which were open cases. Respondent already had 125-150 cases of her own.

As a result of respondent's failure to prepare the judgment, the judge's secretary called her on one or two occasions, inquiring as to the status of the judgment. According to respondent, she advised the secretary that she had a heavy caseload and promised to prepare the judgment. Respondent also contended that she spoke to Mr. Waller on one or two occasions, explained her circumstances and asked him to prepare the judgment. Mr. Waller refused, however. Ultimately, in June 1993, the court directed Mr. Waller to prepare the judgment and also ordered respondent to pay Mr. Waller's fee, in the amount of \$300.

During the divorce proceeding, the court had granted to Mr. White thirty days from the January 28, 1993 trial in which to interpose any objections to the court's proposed settlement terms. Respondent, however, testified that it was her understanding that Mr. White "had to file a motion within 30 days after the judgment was signed if he objected..." (emphasis added) (2T 91).<sup>1</sup>

Mr. White contacted respondent on January 29, 1993, the day after the trial. According to respondent, she explained the court's determinations to him and that he would have thirty days to object to the final judgment, after it was signed. She also testified that she instructed Mr. White to provide additional documentation to her. Respondent added that she then waited for Mr. White to get back to her. Contrarily, Mr. White denied that respondent had mentioned a thirty-day period in which he could object or that he was to provide additional documentation to her. It was his understanding that respondent would be drafting the final judgment, whereupon she would contact him.

Between January and June 1993, Mr. White made four or five attempts to contact respondent via telephone to learn the status of the final judgment. She did not return his calls. Respondent testified that she did not receive any messages from Mr. White, adding that, for a time, she had difficulties with an employee who was not properly recording messages.

---

<sup>1</sup> 1T refers to the transcript of the Karczewski hearing before the DEC on May 25, 1994. 2T refers to the transcript of the White hearing before the DEC on May 25, 1994. 3T refers to the transcript of the hearing before the DEC on July 26, 1994.

As noted above, Mr. Waller prepared the final judgment of divorce, which he forwarded to the court and to respondent on June 15, 1993. His cover letter referred to the five-day rule, allowing for objections to the form of the judgment within five days of receipt, prior to the court's signature. Respondent received the judgment on June 18, 1993, but did not forward it to Mr. White until four days later, June 22, 1993. (Mr. White also picked up a copy of the judgment at respondent's office on or about that date.) Respondent's form letter accompanying the copy of the judgment did not explain to Mr. White the need for his immediate attention to the document under the five-day rule. Thus, Mr. White did not timely notify respondent of his objections to the judgment. The court signed the judgment on June 24, 1993. Mr. White ultimately wrote his comments on a copy of the judgment and "faxed" it to respondent on June 30, 1993.

Respondent took no action upon receipt of Mr. White's objections to the judgment. She testified that she understood that she had thirty days in which to act and that, in the interim, on July 6, 1993, she had received a copy of a July 2, 1993 letter to the court from Mr. White, stating that he was proceeding pro se (2T 114-115).

By letter to the court dated July 2, 1993, Mr. White objected to the provisions in the final judgment and requested an appeal. The court replied by letter dated July 8, 1993, enclosing a copy of the signed judgment, explaining the five-day rule and instructing Mr. White as to the proper procedure on appeal. Mr. White did not

pursue the appeal because he could not afford an attorney and was unable to proceed pro se. Mr. White also testified that he had contacted respondent on an undisclosed date after he received the signed judgment. Her reply to his concerns was to tell him that they could file an appeal.

The DEC determined that respondent violated RPC 1.3, RPC 1.4(a) and RPC 3.2. The DEC disbelieved respondent's testimony that she did not communicate with Mr. White because she was waiting for him to provide additional documents to her. The DEC found that, even if her testimony were credible, the explanation offered was insufficient to justify her failure to contact Mr. White and to explain the procedure to him.

The Karczewski Matter (District Docket No. IV-94-02E)

On August 21, 1993, Stanley Karczewski retained respondent to represent him in connection with a municipal court matter. Mr. Karczewski had allowed a third-party to operate a boat while under the influence of alcohol. At the time of their initial and only meeting, Mr. Karczewski paid respondent \$35 as a consultation fee and \$500 of her \$750 fee. By letter dated August 27, 1993 to the court, respondent entered her appearance in the matter and forwarded \$10 for discovery costs. The case was listed for trial on September 21, 1993. Although Mr. Karczewski appeared in municipal court on that date, respondent did not. Mr. Karczewski did not attempt to contact respondent at that time. Despite the court's offer to adjourn the matter based on respondent's failure

to appear, Mr. Karczewski chose to proceed on that date and pleaded guilty.

According to Mr. Karczewski, within one week of retaining respondent, he spoke with her secretary and provided information on his case. One to two days later, he received notice from the court of the September 21, 1993 date and again telephoned respondent's office. Mr. Karczewski testified that he spoke with respondent and conveyed the date to her.

Respondent, contrarily, denied having been told of the court date by Mr. Karczewski, her secretary or the court. Respondent did not recall a conversation with Mr. Karczewski but added that, if they had spoken, he had not mentioned a court date because she did not have it noted on her calendar.

In his grievance, Mr. Karczewski stated that he had spoken with respondent on September 27, 1993. Respondent told him that she had not appeared in municipal court because her secretary had not put the court date on her calendar. At that time Mr. Karczewski also spoke with respondent about a refund of the retainer fee. According to Mr. Karczewski, respondent advised him that she had to consult with the administrative office of Jacoby and Meyers in New York. During a subsequent conversation about a refund, respondent's secretary advised Mr. Karczewski to put his request in writing. He failed to do so and as of the date of the DEC hearing he had not received a refund. Respondent explained that she had no authority to issue a refund and that all such requests had to be made in writing to the New York office and that

she would have so instructed Mr. Karczewski.

Respondent's secretary, Karen Wilson, testified before the DEC. Although she did not specifically recall speaking with Mr. Karczewski, she had obtained information about his summons from him. She testified that that was her only contact with Mr. Karczewski and that she had not taken telephone messages from him. She stated that, had she obtained a court date for Mr. Karczewski's hearing, she would have entered it on respondent's calendar. She denied receiving notice of a court date in the matter. Ms. Wilson added that she had never discussed a refund of the retainer with Mr. Karczewski.

Respondent had another secretary, who was unable to appear before the DEC. According to Ms. Wilson, neither she nor the other secretary had an independent recollection of Mr. Karczewski. According to Ms. Wilson, however, there might have been a temporary secretary in the office in September 1993.

Testimony was offered before the DEC regarding a statement on respondent's retainer agreement that no work would be undertaken in Mr. Karczewski's behalf until the entire fee was paid. Mr. Karczewski stated that he did not fully read the retainer agreement, but that he believed that the \$500 payment showed his good faith and that respondent would contact him if there was a question about the outstanding \$250, which she did not do. Mr. Karczewski testified that he had planned to pay the \$250 balance at his court appearance. Respondent admitted, however, that her failure to appear was not based on Mr. Karczewski's failure to pay



the balance of the retainer and that she recognized her duty to represent Mr. Karczewski after she had entered her appearance, whether or not she had received the balance of the retainer.

The DEC determined that the record did not establish clear and convincing evidence of a violation of the charged rules: RPC 1.3, RPC 1.4(a) and RPC 3.2. According to the DEC, the record established, at best, the failure of one of respondent's employees to convey a court date to her. The DEC noted that an attorney might, for some purposes, be responsible for a breakdown in her office procedures and termed Mr. Karczewski's testimony "absolutely credible." The DEC concluded, however, that the facts did not give rise to an ethics violation. Thus, the DEC dismissed the allegations.

The DEC did not find a pattern of neglect, in violation of RPC 1.1(b), based upon the lack of finding of neglect in the Karczewski matter.

\* \* \*

By letters dated October 11, 1993 and November 5, 1993, the DEC secretary requested that respondent reply to the allegations in Mr. Karczewski's grievance. By separate letters, on those same dates, respondent was asked to reply to Mr. White's grievance. She did not. The formal complaints in the Karczewski and White matters were forwarded to respondent on February 4, 1994. She did not file an answer. By letter dated March 21, 1994, the DEC chair reminded respondent of her obligation to file an answer and informed her that the letter served to amend the complaint to

include an allegation of a violation of RPC 8.1(b), for failure to file an answer. Again, no answer was forthcoming. Respondent testified that she received the communication from the DEC, but failed to reply because of certain events in her office.

The DEC determined that respondent violated R. 1:20-3(i) and RPC 8.1(b).

\* \* \*

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

Respondent failed to reply to the DEC's request for information and also failed to file an answer to the complaint. Although respondent ultimately cooperated with the DEC, she had no valid excuse for her derelictions. Furthermore, as noted above, this was not her first brush with the disciplinary system. She was privately reprimanded in August 1993 for misconduct that included failure to cooperate with the DEC. Thus, she should have known better. Accordingly, the Board agrees with the DEC and finds that respondent violated RPC 8.1(b).

Respondent's misconduct in the White matter was clear. Despite a directive from the court to prepare a final judgment of divorce, she failed to do so, prompting one or two calls from the judge's secretary. Respondent attempted to excuse her inaction by her heavy caseload and work brought about by the closing of a Jacoby and Meyers' office. By her own admission, however, drafting the

judgment would have taken only a half-hour. In attempting to justify her neglect, respondent alluded to the fact that the judgment would have been the same whether she or Mr. Waller drafted it, since it simply reflected the court's determination. That, however, is no excuse to ignore the instructions of the court. Respondent also failed to communicate with Mr. White and to explain to him the time restrictions on his right to object to the form of the judgment, to his detriment.

More seriously, respondent failed to notify Mr. White of the court's determination to deem Mr. Waller's proposed terms final if no objections were interposed within thirty days of the January 28, 1993 proceeding. Her misconduct in this regard was inexcusable as it led the court and her adversary to believe that Mr. White had agreed to the resolution of the remaining terms and, more egregiously, caused those terms to be binding on Mr. White, who obviously disagreed with them.

Respondent's assertion that she thought that the thirty days were to run from the court's signing of the final judgment of divorce is not credible. The basis for this alleged belief is unreasonable. Why would the court allow her or her client to object to Mr. Waller's proposed settlement terms after they had been reduced to final terms in a final judgment of divorce that had been signed by the court? Like the DEC, the Board finds that respondent violated RPC 1.3, RPC 1.4(a) and RPC 3.2.

In the Karczewski matter, the DEC found that the breakdown in respondent's office procedures did not rise to the level of an

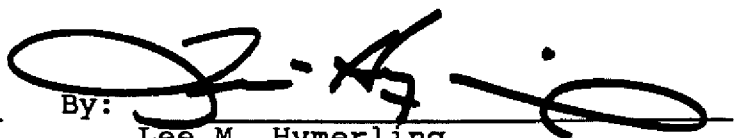
ethics violation on her part. The Board agrees. In addition, even if respondent were guilty of misconduct in this regard, the measure of discipline would not have been greater than that warranted in the White matter.

Respondent was guilty of lack of diligence, failure to communicate and failure to expedite litigation in one matter, as well as failure to cooperate in two matters. In the past, attorneys have received a private reprimand (now an admonition) for misconduct similar to respondent's. Respondent, however, was previously disciplined and has failed to learn from her mistakes. Indeed, although her representation in the White matter began before she received the letter of private reprimand, the investigation of her conduct in that matter was already ongoing. Thus, at a minimum respondent had to know that her conduct was questionable.

In light of the foregoing, the Board unanimously determined to reprimand respondent. See In re Girdler, 135 N.J. 465 (1994) (public reprimand for lack of diligence, failure to communicate and failure to prepare a written retainer agreement. The attorney had been previously privately reprimanded for similar misconduct in two matters). Two members did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/23/95

By: 

Lee M. Hymerling  
Chair  
Disciplinary Review Board