

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 99-147

IN THE MATTER OF :
:
KIMBERLY HINTZE-WILCE :
:
AN ATTORNEY AT LAW :
:

Decision
Default [R. 1:20-4(f)]

Decided: November 16, 1999

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

Pursuant to R. 1:20-4(f), the District VI Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On January 22, 1999 a copy of the complaint was sent to respondent at her last known address. The complaint was sent by certified and regular mail. The certified mail was returned marked "unclaimed", but the regular mail was not returned. On March 11, 1999 a second letter was sent to respondent at the same address by both certified and regular mail, advising her that, if she failed to file an answer within five days, the allegations of the complaint would be deemed admitted and the record would be certified directly to the Board

for the imposition of sanctions. Again, certified mail was returned marked as "unclaimed", but the regular mail was not returned. Respondent did not file an answer.

Respondent was admitted to the New Jersey bar in 1991. On February 24, 1997, she was the subject of a diversion of discipline for the unauthorized practice of law during the period of September 25, 1995 to August 16, 1996, in violation of RPC 5.5(a), R. 1:20(1)(h) and R. 1:20-3(i)(2)(B). At that time, respondent was ineligible to practice law for her failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. On August 5, 1998, a matter involving minor misconduct by respondent, which included charges of lack of diligence, negligence and insufficient client communication, was also diverted pursuant to R. 1:20-3(i)(2)(B). Though respondent agreed to enroll in an in-office law management assistance program, she did not return any of at least five calls made to her by the DEC concerning that agreement.

According to the complaint, respondent was retained in April 1996 by Antoinette Citro in connection with both a sexual harassment, wrongful termination matter and an EEOC matter. The ethics complaint contains three separate counts alleging misconduct by respondent.

The first count charged that respondent not only lost the file pertaining to the Citro case, but also failed to return several calls made by Citro, thus failing to keep her advised of the progress of the case. Moreover, it was alleged that respondent made several appointments with Citro, but failed to keep those appointments. The only violations charged,

however, were of RPC 1.1(a) and RPC 3.2, stemming from respondent's failure to institute appropriate, timely litigation and/or investigation on behalf of Citro.

The second count charged that respondent's conduct in the Citro matter, combined with her conduct toward a client named Stephanie Casey (the second diverted matter), constituted a pattern of neglect.

Lastly, the third count of the complaint charged that respondent failed to reply to the DEC investigator's numerous written and telephonic requests for information about the grievance.

* * *

Service was properly made in this matter, as neither of the two letters sent by regular mail were returned. Therefore, pursuant to R. 1:20-4(f), the allegations of the complaint are deemed admitted. Following a review of the record, the Board found that the facts contained in the complaint support a finding of unethical conduct.

Respondent's failure to return Citro's phone calls or keep scheduled appointments violated RPC 1.4(a) (failure to communicate). Although the complaint does not cite this specific RPC, the facts recited in the complaint provided a sufficient basis for a finding in this regard. Moreover, the recitation of these facts provided adequate notice that a finding of a violation of RPC 1.4(a) could be made. In re Logan, 70 N.J. 222, 232 (1976).

Respondent's conduct in misplacing Citro's file amounted to gross neglect, in violation of RPC 1.1(a). Similarly, respondent's failure to file suit or to conduct an investigation on behalf of Citro constituted gross neglect and a lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Although the complaint alleges that the latter conduct constituted a violation of RPC 3.2, the more applicable rules are RPC 1.1(a) and RPC 1.3. RPC 3.2 deals with a failure to expedite litigation. Here, respondent never filed the lawsuit.

The charge of a pattern of neglect is dismissed. Ordinarily, three instances of neglect are required for a finding of a pattern of neglect, while only two are involved here. Nor does the Board typically consider diverted matters (Casey) as precedent for the purpose of establishing a pattern of neglect.


Lastly, respondent failed to cooperate with the disciplinary authorities, as she did not cooperate with the DEC investigator of the Citro grievance and did not file an answer to the ethics complaint.

Ordinarily, either an admonition or a reprimand would be appropriate discipline for the type of misconduct involved here. See In the Matter of George B. Crisafulli, Docket No. DRB 96-040 (1996) (admonition for gross neglect, lack of diligence, failure to communicate and failure to cooperate); In the Matter of Jeffrey Cohen, Docket No. DRB 98-248 (1998) (admonition for gross neglect, failure to communicate and lack of diligence); In re Mandle, 157 N.J. 68 (1999) (reprimand for gross neglect, lack of diligence and failure to communicate); In re Gordon, 139 N.J. 606 (1995) (reprimand for gross neglect, lack of

diligence failure to communicate and failure to return a file). Accordingly, a six-member majority of the Board determined to reprimand respondent for her conduct in this matter. Three members considered respondent's conduct herein to be sufficient to warrant a suspension and voted to impose a three-month suspension. Indeed, respondent is hereby warned that any future misconduct on her part will result in a period of suspension.

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

Dated: 11/16/55

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kimberly Hintze-Wilce
Docket No. DRB 99-147

Decided: November 16, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Cole			x				
Boylan			x				
Brody			x				
Lolla		x					
Maudsley			x				
Peterson			x				
Schwartz		x					
Wissinger		x					
Total:		3	6				

*Member Thompson is on a temporary leave of absence

Robyn M. Hill 11/22/99
 Robyn M. Hill
 Chief Counsel