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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 99-238

IN THE MATTER OF :
 :
JERI L. SAYER, :
 :
AN ATTORNEY AT LAW :

 :

Decision

Argued: November 18, 1999

Decided: May 10, 2000

James J. Byrnes appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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 XII Ethics Committee ("DEC"), arising from respondent's neglect of a workers' compensation matter. The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate).

Respondent was admitted to the New Jersey bar in 1985. She maintains an office for the practice of law in Clark, Union County. Respondent has no history of discipline.

Veronica M. Chieffo retained respondent in late 1989 or early 1990 in connection with a workers' compensation claim against her employer, the Jackson Township Board of Education, stemming from injuries Chieffo suffered on or about December 8, 1988. On October 21, 1990 respondent filed a workers' compensation petition, which was dismissed for lack of prosecution on February 16, 1994, almost three and one-half years after its filing. The order of dismissal noted respondent's failure to appear in court on Chieffo's behalf. Thereafter, on or about February 1, 1995 respondent filed a motion to restore the petition. Her motion was denied on May 24, 1995.

In June 1995 respondent moved for reconsideration of the court's denial of her motion to restore. The petition was restored by order dated September 27, 1995.

Respondent testified that the delay in the matter was due to problems in receiving an answer to the petition and difficulties in connection with Chieffo's medical treatment and reports. Indeed, the presenter acknowledged that the "first real problem" with the matter occurred only after the case was restored in 1995.

By order dated January 10, 1996 Chieffo's matter was dismissed for a second time for lack of prosecution. The order cited respondent's failure to appear in court on Chieffo's behalf.

In January 1997 respondent filed a motion to restore the workers' compensation claim. On January 6, 1998 the court denied respondent's motion. Respondent, who had

obtained numerous adjournments of the return date of the motion, failed to appear on the January 6, 1998 return date.

With regard to her numerous requests for adjournments of the motion, respondent testified that she had scheduled appearances in other matters, when she received notice of the Chieffo hearings, and that she "was taking them in the order that [they were] coming into the office." Respondent explained that it had been her "understanding that family court matters and matters involving children had priority over workers' comp and that's why [she] did not appear on those cases."

In March 1998 respondent filed an appeal with the appellate division, contesting the workers' compensation court's denial of her motion to restore. By order dated July 1, 1998 the appellate division dismissed the appeal on its own motion, based on respondent's failure to file a timely brief. As of the date of the DEC hearing, there was no pending application to restore Chieffo's claim.

In March 1998, after respondent filed the appeal, the attorney for Chieffo's employer advised respondent that the employer was willing to settle the matter, despite the dismissal of the workers' compensation claim. Respondent failed to pursue settlement negotiations. She testified that she had not called the employer's attorney until the week before the DEC hearing.

* * *

Chieffo testified that respondent failed to keep her advised about the status of her claim. Of particular note was Chieffo's testimony that respondent did not notify her that her case had been dismissed.

In or about March 1998 Chieffo sent a certified letter to respondent, asking about the status of her case. Respondent did not reply to the letter.

Respondent, in turn, testified that she did communicate with Chieffo on occasion, but not as often as she should have. Respondent recalled advising Chieffo about the "most recent" dismissal, but could not recall when or how she conveyed the information to her. Respondent did not remember informing Chieffo that she had filed the appeal.

* * *

By way of explanation for her misconduct, respondent testified that in March 1998 her father became seriously ill and passed away in May 1998. Her father's illness required her to make repeated trips to her family home in Michigan. Respondent also testified that subsequent difficulty with her sister, who is disabled, caused respondent to continue to make periodic trips to Michigan. In addition, respondent testified that her baby, born in November 1995, required surgery in May 1996 due to multiple birth defects. Respondent stated that she has sought medical care for anxiety and depression, was continuing to take medication and has improved.

Respondent claimed that, in some instances, she had either arranged for other attorneys to appear in her clients' behalf or had withdrawn from cases she was handling,

when family matters had caused her to be away from her office. She acknowledged, however, that she failed to make similar arrangements in other cases, including Chieffo's.

Respondent stated that she has cut back her practice and that she currently works only two days a week, although she still maintains a secretary five days per week. Respondent added that her practice is focused on "transactional" matters, which allows her to better control her schedule, and that she has an attorney who does per diem work for her when there are scheduling conflicts.

* * *

The DEC determined that respondent had violated RPC 1.1(a) and RPC1.3, based on her failure (1) to appear in workers' compensation court on several occasions; (2) to diligently pursue the restoration of the workers' compensation matter; (3) to file a timely appellate brief and (4) to pursue settlement of Chieffo's claim. The DEC also found that respondent had violated RPC1.4(a), based on her failure to keep Chieffo informed about the status of her matter.

In mitigation, the DEC pointed to respondent's lack of prior discipline, her admission of wrongdoing and remorse, her cooperation with the DEC and the absence of any personal gain in the matter.

In addition to recommending a reprimand, the DEC suggested the adoption of a number of additional conditions, including the forfeiture of any legal fees associated with Chieffo's case.

* * *

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

Nothing in the record casts doubt on the truthfulness of respondent's testimony about her conflicting court and family obligations. At one point, however, when Chieffo's matter had to be put above other matters and resolved. Respondent failed to do so. According to respondent's testimony, she believed that she was proceeding properly and handling matters in their order of priority. While it may be good practice to tend first to matters that require immediate attention, it is an attorney's responsibility to contact the courts and the individuals involved in the less pressing matters, in order to obtain adjournments, extensions of deadlines or whatever else is required to obtain additional time to protect the clients' interests. If all such efforts prove unsuccessful, withdrawal from the representation is warranted. In Chieffo, although respondent contacted the courts and was given several adjournments, she did not appear on the return date of her motion to reinstate the petition. At this point, the court determined to put an end to the several accommodations formerly extended to respondent and to dismiss the petition once and for all.

Chieffo's claim remains unresolved. Even accepting the presenter's statement that it was the September 1995 restoration of Chieffo's case that signaled the beginning of respondent's misconduct, it is unquestionable that respondent allowed far too much time to pass without moving the case forward.

The DEC's determination that respondent violated RPC 1.1(a) and RPC 1.3 is, therefore, supported by the record, as is a violation of RPC 1.4(a).

As to mitigation, the record shows that a number of family problems and responsibilities kept respondent from her office, beginning in March 1998. Respondent was forced to cope with the serious illness and subsequent death of her father, requiring frequent trips to Michigan. In addition, she became the guardian of her disabled sister and also had to cope with the birth of a child with multiple birth defects. These events understandably took a toll on respondent's law practice.

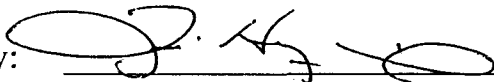
To respondent's credit, she has recognized her problem and has cut back her practice both in hours and in the nature of the cases she handles. Furthermore, she seemed truly remorseful for the harm suffered by her client.

In light of these factors, a six-member majority determined that an admonition is sufficient discipline for respondent's infractions. See In the Matter of Michael A. Amantia, Docket No. DRB 98-402 (September 22, 1999), (admonition imposed with the approval of the Court where an attorney demonstrated gross neglect, lack of diligence and failure to communicate in connection with the settlement of an estate).

One member dissented, voting for a reprimand. Two members did not participate.

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

Dated: 5/16/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeri L. Sayer
Docket No. Docket No. DRB 99-238

Argued: November 18, 1999

Decided: May 10, 2000

Disposition: Admonition

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:			1	6			2

By Robyn M. Hill 5-19-00
Robyn M. Hill
Chief Counsel