SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-152
District Docket No. VB-2006-0010E

IN THE MATTER OF	
NANCY I. OXFELD	
AN ATTORNEY AT LAW	

Decision

Decided: August 6, 2009

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

This matter was before us on a certification of default filed by the District VB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f)(2). The complaint charged respondent with gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b)), and a pattern of neglect (RPC 1.1(b)).

On July 7, 2009, respondent filed a motion to vacate the default, which we denied for the reasons detailed below. We determine that she should receive a censure for her conduct in this matter.

Respondent was admitted to the New Jersey bar in 1977. This is her fourth encounter with the disciplinary system. In 1995, she was admonished for failure to comply with a client's requests for information about the status of her matter. In the Matter of Nancy I. Oxfeld, DRB 95-041 (March 22, 1995).

In 2001, respondent received a second admonition, this time for a conflict of interest. Specifically, after she was appointed by the New Jersey Education Association ("NJEA") to represent Kenneth Thomas Tucker in labor grievances against a Board of Education, she withdrew from the representation because of a perceived conflict of interest on her part. Later, however, she assisted new counsel, who was also her cousin and law partner, in the hearing, participated in settlement negotiations and, based on her former attorney/client relationship with Tucker, expressed her opinion about the possibility of a settlement. In the Matter of Nancy I. Oxfeld, DRB 01-144 (July 3, 2001).

In 2005, respondent received a reprimand. In re Oxfeld, 184 N.J. 431 (2005). In that case, she lacked diligence in representing two clients and failed to comply with one of the clients' several inquiries about the status of the matter.

We will first address respondent's motion to vacate the default.

In her motion, respondent alleged that she did not file an answer because she was "in such shock to receive an allegation that I had failed in my professional obligation to the complainant . . . that I found myself, on my own behalf, speechless in a way that I would not be on behalf of a client."

Specifically, respondent stated that, after having filed a reply to Rance's grievance, on April 5, 2006, she did not hear from the DEC for two years, when she was contacted by a DEC member (other than the initial DEC investigator) who was "following up on the complaint". According to respondent, she provided him some documents that he had requested and had some discussions with him. She did not recall the date of the conversations or their content. She then stated:

> 8. The point at which I went into a state of shock and disbelief was when I received a voicemail from [the DEC member] (again I do not have a record of the date) in which he offered to resolve the matter with my agreeing to a number of violations of the RPC, including admitting that I had failed to file a complaint which I had agreed to file.
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> 9. I regret to say that when I received a voicemail that concerned myself as a client, I failed to keep a record of it and acted in just the way that I would have advised my clients not to. Therefore I cannot say the exact contents of the voicemail, only that it left me in shock because of the items to which [the DEC member] requested I admit, including failing to file a complaint.

> 10. Therefore, when I received the complaint from the [DEC], I did not respond or request an extension of time.
>
> [RC¶8-RC¶10.][1]

Respondent went on to say that her "delay in responding to the complaint is only a matter of a few months (the complaint was sent to me in February 2009 and it is now the beginning of July 2009), while the [DEC] delayed for over two years in acknowledging my response to the original grievance . . . ." She added that she did not mean to suggest that her delay is justified because of the DEC's delay, but simply that, "when the entire matter is placed in context the delay caused by myself caused only a small part of the delay in the processing of this matter."

As to any meritorious defenses to the charges, respondent called the allegations "untrue." She explained that her law firm is what is known as "network" law firms for the NJEA; that one of the things that the firm does is to review claims of individual members of the NJEA and to make recommendations as to whether the members should be provided with legal services; that the firm also provides those legal services, if recommended; that she was asked to review Rance's claim; that, in her view, it was possible that Rance's contract with the Union City Board of Education had

[1] RC denotes respondent's certification in support of her motion.

not been renewed because of racial bias on the part of the school principal; that, after meeting with Rance, she had sent a letter to NJEA recommending representation; that, on the same day, she had instructed Rance to send her "word for word every discussion [she] had with [the school principal];" that she did not receive the information from Rance, despite her second request for it; and that she did not file the complaint because she lacked the information she needed to file the complaint.

Respondent denied the allegations that she failed to communicate with Rance. She added that she is unable to respond more specifically to these allegations because she does not know the factual basis for them.

In order to succeed in a motion to vacate a default, a respondent must satisfy a two-prong test: to offer a reasonable explanation for the failure to file an answer to the complaint and to present meritorious defenses to the charges. Here, respondent seemed to have satisfied the second prong of the test, if her assertions are true. She did not, however, advance a reasonable explanation for her failure to answer the complaint. All she contended is that she went into a "state of shock and disbelief" when she received a voicemail message from a DEC member offering a resolution of the matter by way of an admission to a number of violations and that, consequently, when she was

served with the complaint, she "did not respond or request an extension of time."

Nothing in the record disputes respondent's professed lapse into an instant "state of shock and disbelief," on learning of the DEC member's proposal. It is doubtful, however, that she would have remained frozen in that state for twenty-one days (the time prescribed for the filing of the answer). She certainly had enough time to "thaw out." More likely, she chose to ignore the complaint because she could not "believe" that her conduct in the Rance case was under ethics scrutiny.

Because respondent has not satisfied the first prong of the applicable test, we denied her motion and determined to proceed with our review of this matter as a default.

Service of process was proper. On February 26, 2009, the DEC sent a copy of the complaint to respondent's office address by regular and certified mail. The certified mail was accepted by a "C. Carter" on February 27, 2009. The regular mail was not returned.

Following respondent's failure to file an answer, the DEC sent her a letter, on March 26, 2009, informing her that, if she did not file an answer within five days of the date of the letter, the record would be certified directly to the Board for the imposition of sanction, pursuant to R. 1:20-4(f). That

letter, too, was sent by regular and certified mail addressed to respondent's office. On April 2, 2009, "C. Carter" signed the certified mail card. The regular mail was not returned.

Respondent did not file an answer to the complaint.

According to the complaint, in June 2002, Beril Rance, a teacher who participated in the NJEA Legal Services Program, was referred to respondent by the NJEA in connection with a possible race discrimination claim against the Union City Board of Education. Subsequently, the NJEA approved respondent's representation of Rance.

After July 2002, respondent did not communicate with Rance and did not reply to her requests for information about the case. She also failed to file a complaint on Rance's behalf, allowing the statute of limitations to expire.

The complaint charged that the above conduct constituted gross neglect, lack of diligence, failure to communicate with client, and a pattern of neglect, when "combined with Respondent's prior disciplinary history."

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent's failure to file suit on Rance's behalf and failure to comply with her requests for information about the case constituted gross neglect, lack of diligence, and failure to adequately communicate with the client, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). The only question is whether respondent may be found guilty of a pattern of neglect, a violation of RPC 1.1(b).

For a finding of a pattern of neglect at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Because in neither of respondent's prior disciplinary matters was she found guilty of neglect, the charged violation of RPC 1.1(b) must be dismissed.

We now turn to the question of the appropriate discipline for this respondent.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In re Russell, N.J. (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment

to be entered against him; the attorney also failed to explain to the client the consequences from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition imposed on attorney whose inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; the attorney failed to communicate with the client about the status of the case); In re Darqay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); and In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In re Aranquren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack

of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Here, an admonition would be too lenient a sanction for this respondent because of her disciplinary record: two admonitions and a reprimand. In two of the matters (the 1995 admonition and the 2005 reprimand), as here, respondent ignored her clients' requests for information about their cases; in one of those matters (the 2005 reprimand), as here, she lacked diligence in the representation of the client. Although the conduct in the present matter preceded the conduct that resulted in her reprimand, it postdated her two admonitions. It is evident, thus, that she did not learn from her past mistakes. That being the case, at least a reprimand would be warranted for her current transgressions.

But there is one additional factor to consider. Respondent allowed this matter to proceed as a default by not filing an answer to the complaint. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities

as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). We, therefore, determine that a censure is the appropriate discipline in this instance.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
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