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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-180  
District Docket No. XIV-2007-23E

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IN THE MATTER OF  
NANCY J. WOOD  
AN ATTORNEY AT LAW

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

Decided: December 5, 2007

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

This matter came before us on a certification of default  
filed by the Office of Attorney Ethics ("OAE"), pursuant to R.  
1:20-4(f). The complaint charged respondent with failure to  
comply with R. 1:20-20(e), which requires a suspended attorney's  
law firm to file an affidavit of compliance with R. 1:20-20 on  
the suspended attorney's behalf, when the suspended attorney  
fails to do so. The complaint also charged respondent with

failure to remove the firm's sign, "Wood & Wood, LLC," after Wood's suspension. Finally, respondent was charged with practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF) and to comply with the IOLTA requirements set forth in R. 1:28A.

For the reasons stated below, we determine to impose a censure on respondent for her violations of RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 5.5(a) (unauthorized practice of law).

Respondent was admitted to the New Jersey bar in 1988. At the relevant times, she maintained an office for the practice of law in Mount Holly. Respondent has no disciplinary history.

From September 15, 1997 to September 23, 1997, respondent was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the CPF. She was on the list again from September 25, 2006 to September 19, 2007. From October 30, 2006 to October 10, 2007, respondent was placed on the Supreme Court's list of ineligible attorneys for "failure to comply with Rule 1:28A in respect of the Court's mandatory IOLTA program."

Service of process was proper. On March 8, 2007, the OAE sent a copy of the complaint to respondent's office address, 29 Grant Street, Mount Holly, New Jersey 08060, via regular and certified mail, return receipt requested. On March 14, 2007, Nancy Yocum signed for the certified letter. According to the OAE's certification of the record, Yocum was respondent's office assistant. The letter sent via regular mail was not returned.

On April 4, 2007, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed her that, if she failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was marked "unclaimed" and returned. The letter sent via regular mail was not returned.

As of May 31, 2007, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

On October 9, 2007, the Office of Board Counsel received respondent's motion to vacate the default, which, for the reasons expressed below, we denied.

According to the two-count complaint, respondent and her husband, Scott J. Wood ("Wood"), were partners in the Mount

Holly law firm of Wood & Wood, LLC. The Supreme Court suspended Wood from the practice of law, effective August 15, 2005. He has not been reinstated.

The first count of the complaint alleged that, after Wood failed to file an affidavit of compliance with R. 1:20-20, under R. 1:20-20(e), his law firm was required to do so. On December 14, 2006, the OAE wrote to respondent and informed her that, as Wood's partner, she was obligated to file the affidavit. She failed to do so.

The first count further alleged that, on August 30, 2006, OAE representative Terry Bruck visited respondent's law office and observed a sign on the front of the building that read "Wood & Wood Law Offices." Moreover, respondent's business cards, which were located inside the lobby, identified her law firm as "Wood & Wood LLC." At the time of the visit, Yokum informed Bruck that respondent was on vacation. Furthermore, Yokum reported, Wood was no longer practicing law, and respondent had taken over his files.

On February 9, 2007, OAE investigator Wanda Riddle visited respondent's law office and observed that the "Wood & Wood LLC" sign had been replaced by a sign that read "The Wood Law Firm, LLC."

Based on these facts, the first count charged respondent with having violated RPC 8.1(b) and RPC 8.4(d), by failing to file the affidavit required by R. 1:20-20(e) and by using "improper signage for a period of time in which Scott Wood was suspended."

The second count of the complaint alleged that, on September 25, 2006, respondent was declared ineligible to practice law for non-payment of the annual registration fee to the CPF, as required by R. 1:20-1(b). In addition, on October 23, 2006, respondent was declared ineligible to practice law for noncompliance with the IOLTA requirements prescribed by R. 1:28A. Nevertheless, she continued to practice law up through and including the filing of the formal ethics complaint (March 8, 2007) "and continuing," in violation of RPC 5.5(a).

Before we consider the merits of the disciplinary charges against respondent, we first examine her motion to vacate the default. To vacate a default, a respondent must meet a two-pronged test: offer a reasonable explanation for the failure to answer the ethics complaint and assert a meritorious defense to the underlying charges. Respondent has not satisfied the requirements for vacating the default in this matter.

According to respondent, she was out of the office when the complaint was sent to her on March 4, 2007. When she "returned

to the office, the Complaint had been inadvertently placed aside and it did not reappear again until the most recent letter received from Julianne DeCore, Esquire, Chief Counsel for the Disciplinary Review Board." Respondent's assertion that the complaint "had been inadvertently placed aside" suggests either that she never saw it in the first place or that she had seen it but misplaced it and then, perhaps, forgot about it. Nevertheless, respondent mentioned nothing of the OAE's five-day letter, which was sent to her on April 4, 2007.

After suggesting that she may not have seen the complaint until Chief Counsel's August 28, 2007 letter, informing her of the certification of this matter to us as a default, respondent claimed:

I am not in a position to offer an excuse for not filing an Answer in response to the Complaint other than to state that I remained in denial that an ethics action was pending against me for administrative reasons as opposed to a client grievance, for which I had none. It is simply put, unintentional dereliction as to administrative duties.

[RC12.]<sup>1</sup>

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<sup>1</sup> "RC" refers to respondent's undated certification in support of her motion to vacate the default.

In this paragraph, respondent conceded that she had no excuse for failing to file an answer. Moreover, her stated inability to appreciate that a disciplinary proceeding requires attention, irrespective of whether the proceeding arises from a client's grievance or the attorney's failure to comply with the administrative rules, does not save her from the consequences of her inaction.

In short, respondent did not establish that her failure to file an answer to the complaint was the result of excusable neglect. Accordingly, we denied the motion to vacate. We now turn to the merits of the allegations in the complaint.

Following a review of the record, we find that the facts recited in the complaint sufficiently support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

The allegations of the first count of the complaint establish that respondent violated RPC 8.1(b) and RPC 8.4(d) when she failed to file an affidavit of compliance on behalf of Wood. R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the order of suspension, to "file with the Director [of the OAE] the original of a detailed affidavit

specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Failure to comply with this obligation constitutes a violation of RPC 8.1(b) and RPC 8.4(d). R. 1:20-20(c).

R. 1:20-20(e) requires "an attorney who is affiliated with the disciplined or former attorney as a partner, shareholder, or member" to "take reasonable actions to ensure that the attorney complies with this rule." If, despite the reasonable actions, the suspended attorney fails to file the affidavit of compliance within the thirty-day period, R. 1:20-20(e) requires "the law firm [to] do so."

In this case, Wood failed to file the affidavit of compliance. Respondent failed to comply with her obligation to file the affidavit on his behalf. Inasmuch as Wood's failure to file the affidavit constituted a violation of RPC 8.1(b) and RPC 8.4(d), respondent's inaction violated the same rules.

We note that, as of this decision, respondent still has not complied with her obligation to file the affidavit of compliance on behalf of Wood. This is a continuing violation of R. 1:20-20(e), which must be corrected.



Respondent also failed to remove the "Wood & Wood, LLC" sign after Wood had been suspended. R. 1:20-20(b)(4) prohibits a suspended attorney from using "any stationery, sign or advertisement suggesting that the attorney, either alone or with any other person, has, owns, conducts, or maintains a law office of office of any kind for the practice of law, or that the attorney is entitled to practice law." After Wood failed to remove the sign, respondent was required to do so under R. 1:20-20(c).<sup>2</sup>

Finally, respondent engaged in the unauthorized practice of law, in violation of RPC 5.5(a), when she continued to practice law after having been placed on both the CPF and the IOLTA ineligibility lists.

There remains the determination of the quantum of discipline to be imposed for respondent's misconduct. The threshold measure of discipline for an attorney's failure to file a R. 1:20-20 affidavit is a reprimand. In re Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record

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<sup>2</sup> Respondent's violation caused by her failure to remove the "Wood & Wood, LLC" sign is subsumed in the violation based on her failure to file the affidavit of compliance.

demonstrates mitigating or aggravating circumstances. Ibid. Examples of aggravating factors include the attorney's failure to comply with the OAE's specific request that the affidavit be filed, the attorney's failure to answer the complaint stemming from the non-compliance with R. 1:20-20, and the existence of a disciplinary history. Ibid. See, e.g., In re Girdler, 179 N.J. 227 (2004) (three-month suspension imposed on attorney in a default matter for his failure to comply with R. 1:20-20; the attorney failed to produce the affidavit after prodding by the OAE and after agreeing to do so; the attorney also failed to file an answer to the ethics complaint; his disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter); In re Raines, 181 N.J. 537 (2004) (three-month suspension where attorney's ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order); In re Horowitz, 188 N.J. 283 (2006) (on a certified record, a six-month suspension was appropriate for an attorney who failed to comply with R. 1:20-20, where the attorney's ethics history consisted of a three-month suspension and a pending one-year suspension in two default matters; ultimately, the attorney was

disbarred on a motion for reciprocal discipline from New York); and In re King, 181 N.J. 349 (2004) (in a default, the Court imposed a one-year suspension on an attorney with an extensive ethics history comprised of a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; in two of the matters, the attorney failed to cooperate with disciplinary authorities; the attorney also ignored the OAE's attempts to have her file an affidavit of compliance). But see In re Moore, 181 N.J. 335 (2004) (in a default matter, attorney received a reprimand for his failure to comply with R. 1:20-20; his "extensive disciplinary record" was considered with the fact that attorneys who fail to comply with the rule "indirectly receive a three-month suspension because the[y] are precluded from seeking reinstatement for three months from the date that the affidavit is filed").

Respondent's violations of RPC 8.1(b) and RPC 8.4(d) warrant more than a reprimand, as two aggravating factors are present. She failed to respond to the OAE's specific request that she file the affidavit on behalf of Wood. She also defaulted in this matter. In our view, these factors justify more than a reprimand. However, respondent's unethical acts did

not stop here. Respondent also practiced law during a period of ineligibility.

An admonition is generally imposed on an attorney who practices law while ineligible, if the attorney is unaware of the ineligibility. In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (admonition for practicing law during nineteen-month ineligibility); See, e.g., In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (admonition for practicing law while ineligible and failing to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his prompt action in correcting his ineligibility status, and the absence of self-benefit); and In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (admonition for attorney who, while ineligible to practice law, represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of disciplinary history).

A reprimand is usually imposed when the attorney either has an extensive ethics history, or has been disciplined for conduct

of the same sort, or is aware of the ineligibility and practices law anyway. See, e.g., In re Perrella, 179 N.J. 99 (2004) (attorney reprimanded for advising his client that he was on the inactive list and then practicing law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); In re Forman, 178 N.J. 5 (2003) (reprimand for attorney who, for a period of twelve years, practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered); In re Lucid, 174 N.J. 367 (2002) (reprimand for practicing law while ineligible; the attorney had been disciplined three times before: a private reprimand in 1990, for lack of diligence and failure to communicate with a client; a private reprimand in 1993, for gross neglect, lack of diligence, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities; and a reprimand in 1995, for lack of diligence, failure to communicate with a client, and failure to prepare a written fee agreement); and In re Ellis, 164 N.J. 493 (2000) (reprimand for attorney who, one month after being reinstated from an earlier period of ineligibility, was notified of his 1999 annual assessment obligation, failed to make timely

payment, was again declared ineligible to practice law, and continued to perform legal work for two clients; he had received a prior reprimand for unrelated violations).

In this case, the complaint is silent as to whether respondent knew that she was ineligible. Therefore, as a matter of fairness, we are unable to say that the appropriate discipline for her practicing while ineligible is a reprimand, rather than an admonition.

For the totality of respondent's conduct, we determine to impose a censure. Member Lolla did not participate.

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  
William J. O'Shaughnessy  
Chair

By: Paul Frank  
for Julianne K. DeCore  
Chief Counsel

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Nancy R. Wood  
Docket No. DRB 07-180

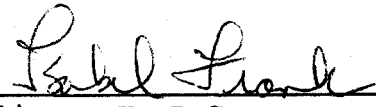
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Decided: December 5, 2007

Disposition: Censure

Members	Suspension	Censure	Admonition	Disqualified	Did not participate
O' Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla					X
Neuwirth		X			
Stanton		X			
Wissinger		X			
<b>Total:</b>		8			1

*for*   
Julianne K. DeCore  
Chief Counsel