SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-288

IN THE MATTER OF

JAMES H. WOLFE, III,

AN ATTORNEY AT LAW

Argued: December 21, 2000

Decided: May 7, 2001

Cynthia A. Walters appeared on behalf of the District VB Ethics Committee.

Kirk D. Rhodes appeared on behalf of respondent.

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

This matter was before us based upon a recommendation for discipline filed by the District VB Ethics Committee (DEC). At the time of the alleged misconduct, respondent maintained an office for the practice of law in Newark, Essex County.

* * *

In 1998 respondent received an admonition for failing to advise his clients of the status of their matter, in violation of RPC 1.4(a). In the Matter of James H. Wolfe, III, Docket No. DRB 98-098 (April 27, 1998). In August 1999, we voted to suspend respondent for three months for violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client). In the Matter of James H. Wolfe, III, Docket No. DRB 99-022 (August 23, 1999). That matter, which was transmitted to the Court in September 1999, was remanded to us in July 2000 for reconsideration of the discipline imposed. Following reconsideration, we unanimously determined to impose a reprimand for respondent's misconduct. That matter is awaiting Supreme Court review. Also awaiting Supreme Court review is In the Matter of James H. Wolfe, III, Docket No. DRB 00-050 (December 28, 2000), wherein we determined to suspend respondent for three months for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b) in one matter and RPC 1.4(a) in a second matter.

* * *

On or about November 11, 1990 the grievant, James Johnson, was involved in a motor vehicle accident in Hillsborough Township. Shortly thereafter, he retained respondent to represent him in an action against the driver of the other automobile involved in the accident, as well as against Hillsborough Township and others.

At the DEC hearing, Johnson testified about the case. Apparently, the matter proceeded apace for the first few years. Johnson recalled that, in April 1993, respondent sent him a set of interrogatories, which he answered and returned. Johnson's deposition was taken in or about September 1994.

In April 1994 Johnson's case was dismissed for failure to answer interrogatories. According to Johnson, it was after his September 1994 deposition that he first experienced problems obtaining information about his case. Johnson claimed that, between September 1994 and late 1997, he telephoned respondent twenty to thirty times, but respondent never called him back. According to Johnson, no one informed him that his case had been dismissed. He stated that he did not learn of the dismissal until the DEC hearing.

Johnson further testified that, in or about December 1997, he learned on his own that respondent had left the law firm of Brown, Lofton, Childress & Wolfe. On December 11, 1997 Johnson wrote letters to respondent, to Paulette Brown and to Louis W. Childress, in hopes of finding out information about his case. On December 23, 1997 Louis W. Childress replied as follows:

> We have your letter of December 11, 1997 which was received in our office on December 19, 1997. Mr. Wolfe's new address is 339 Main Street, Orange, New Jersey 07050.
>
> By copy of this letter I am advising him of your inquiry.

For his part, respondent conceded that Johnson had retained him in or about 1990 to continue the accident litigation originated by Johnson's former attorney. Respondent testified that his law firm, Lofton & Wolfe, merged with the law offices of Brown &

Childress in July 1993. As a result, he claimed, he became responsible for 300 New Jersey "JUA" cases, as well as other litigation matters. Respondent also claimed that, in or about October 1993, he assigned Johnson's matter to James Dow, an associate in the new, merged law firm. According to respondent, Dow reported to the firm's managing attorney, Paulette Brown. Respondent blamed Brown for failing to supervise the associates at the firm, including Dow. Respondent asserted that he had little to do with Johnson's case after the reassignment and assumed thereafter that Dow was handling it properly.

As to his contacts with Johnson, although he recalled receiving some messages that Johnson had called, respondent had no specific recollection of when those calls had taken place. Respondent testified that he gave those messages to Dow, with instructions for him to return the calls. Respondent also believed, but was not certain, that he had spoken to Johnson directly about Dow's involvement in the case and had told Johnson to contact Dow directly for information about the matter. Respondent admitted, however, that he did not confirm in writing those instructions to Johnson. Finally, respondent blamed Dow for not contacting Johnson, adding that Dow had left the law firm "abruptly" and on "unpleasant terms."

The only other evidence that respondent corresponded with Johnson during the pendency of the matter was 1) an April 8, 1993 letter to Johnson regarding the answers to

interrogatories; 2) a September 2, 1993 letter to another attorney in the case, with a copy to Johnson;[1] and 3) an October 28, 1993 letter to Johnson regarding his upcoming deposition.

With respect to respondent's December 23, 1997 correspondence from Childress, apprising him of Johnson's inquiry about the case, respondent recalled receiving that letter and immediately searching for Johnson's file. According to respondent, although he conducted an exhaustive search for the file, he was unable to locate it. He suggested that Dow had taken it upon his departure from the law firm.[2] When asked at the DEC hearing if he had made any attempts to contact Dow about the file, respondent conceded that he had not.

Finally, respondent was asked if he believed that he had the ultimate responsibility for Johnson's case, despite Dow's involvement in the matter. Respondent replied that the file belonged to the law firm upon the merger. He did not acknowledge that, as the attorney of record throughout the case, he had an obligation to communicate with Johnson.

With respect to the underlying litigation against Hillsborough Township, respondent testified that he was unaware, until the ethics proceedings, that answers to interrogatories had not been filed in the case or that the complaint had been dismissed for plaintiff's failure

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[1]On this score, respondent surmised that the answers to interrogatories may not have been sent to all of the parties, thereby resulting in the ultimate dismissal of the complaint.

[2]It is unclear from the record when Dow left the law firm, whether before or after respondent.

to do so. According to respondent, "If I had known about it, I would have taken care of it." T41[3].

Respondent offered several mitigating factors for his behavior in this matter. He stated that, during this approximate time, in addition to working extraordinarily long hours in the new law firm, he was also spending a great deal of time caring for an ailing father and a sister who was dying of AIDS.

* * *

The DEC found that respondent violated RPC 1.4(a) by his failure to communicate the status of the case to Johnson. The DEC specifically found that respondent, as the "partner in charge of the case," had a duty to communicate with Johnson, even though work on the file may have been performed by Dow. After considering the mitigation presented, the DEC recommended the imposition of a three-month suspension for respondent's misconduct.

* * *

[3]T refers to the transcript of the DEC hearing on May 25, 2000.

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

From the outset of the representation in 1990, respondent was responsible for Johnson's matter. He could not absolve himself of that duty simply by reassigning the matter to an associate in the office; his ultimate responsibility for Johnson's case could not be delegated. For the same reason, we find that Brown was not culpable for mistakes in the case. This was not a matter that "fell through the cracks" after the merging of the two law firms and its later dissolution. The foregoing would suggest, thus, that charges of gross neglect and lack of diligence would have been appropriate. Nevertheless, respondent was not put on notice that these might be issues in the disciplinary proceedings. Likewise, there is no evidence to refute respondent's contention that Brown took over the main supervisory role in the case.

With respect to the alleged violation of RPC 1.4(a), Johnson's testimony was compelling. On twenty to thirty occasions he tried to obtain information from respondent about the case, after his deposition in September 1994. Respondent admitted receiving some of Johnson's messages and giving them to Dow with instructions to call Johnson. Indeed, there is no evidence that respondent communicated with Johnson at all after October 28, 1993, the date of his last correspondence in the case. Worse yet, once respondent was alerted to the situation by his former partner, Childress, he did not reach out to Johnson. Instead, he mounted a search for Johnson's file and, unable to find it, did no more work in

the case. Thus, we find respondent guilty of failure to communicate with his client, in violation of RPC 1.4(a).

Ordinarily, an admonition would suffice for a single violation of RPC 1.4(a). See In the Matter of Anthony F. Carracino, Docket No. DRB 95-381 (November 30, 1995) (admonition imposed where the attorney failed to keep his client reasonably informed of the status of her personal injury matter); In the Matter of Paul A. Dykstra, DRB Docket No. 00-182 (September 27, 2000) (admonition imposed where the attorney failed to communicate with his clients that an arbitration award that the clients declined to accept had never been appealed but had been dismissed a year earlier); and In the Matter of Beverly G. Giscombe, DRB Docket No. 96-197 (July 24, 1996) (admonition imposed where the attorney failed to communicate the status of the matter to a client in a personal injury case). However, respondent is no newcomer to the ethics system. In fact, his other ethics matters were in various stages of completion when, in December 1997, he received the letter from Childress advising him of Johnson's plight. Respondent should have had a heightened awareness of the importance of communicating with his clients. We recognize that respondent was experiencing difficult times personally and professionally at the time of these offenses. Nevertheless, respondent's pattern of failure to communicate with his clients, as evidenced by his prior misconduct in other matters, cannot be tolerated. Therefore, we unanimously found that a reprimand, not an admonition, is appropriate for respondent's lack of

communication with his client and failure to recognize his duty to keep clients informed about the progress of their matters.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: May 7 2001

ROCKY L. PETERSON
Chair
Disciplinary Review Board

*SUPREME COURT OF NEW JERSEY*

## *DISCIPLINARY REVIEW BOARD*
## *VOTING RECORD*

**In the Matter of James H. Wolfe, III**
**Docket No. DRB 00-288**

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**Disposition: Reprimand**

| Members | Disbar | Suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not Participate |
|---|---|---|---|---|---|---|---|
| Hymerling | | | X | | | | |
| Peterson | | | X | | | | |
| Boylan | | | X | | | | |
| Brody | | | X | | | | |
| Lolla | | | X | | | | |
| Maudsley | | | | | | | X |
| O'Shaughnessy | | | X | | | | |
| Schwartz | | | | | | | X |
| Wissinger | | | X | | | | |
| **Total:** | | | 7 | | | | 2 |

Robyn M. Hill
Chief Counsel