SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-193

IN THE MATTER OF

CASSELL WOOD, JR.

AN ATTORNEY AT LAW

Decision

Argued: July 18, 2002

Decided: October 21, 2002

Jamie K. Von Ellen appeared on behalf of the District XII Ethics Committee.

Michael Blacker 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 on a recommendation for discipline filed by the District XII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1974. On October 31, 1985 he received a private reprimand for recordkeeping violations. In the Matter of Cassell Wood, Jr., Docket No. DRB 85-105. On February 21, 2002 he was suspended for three months, effective March 25, 2002, for negligent misappropriation of client funds, recordkeeping violations, permitting or authorizing a disbarred attorney to perform

services for an attorney or client and failure to cooperate with disciplinary authorities. Respondent had authorized a disbarred attorney to drive clients to hospital appointments and to pick up documents in connection with a personal injury matter. In re Wood, 170 N.J. 628 (2002). Respondent was reinstated to the practice of law on August 21, 2002.

The complaint in this matter alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 3.4(d) (failure to comply with discovery requests), RPC 4.4 (using means to embarrass, delay, or burden a third person), RPC 8.4(d) (conduct prejudicial to the administration of justice) and RPC 8.1(b) (failure to cooperate with ethics authorities).

On or about April 15, 2000 Caroline Johnson retained responded to represent her as executrix in a contested probate matter titled In the Matter of the Estate of Mary E. Cabbell, pending in Union County. Respondent replaced Clyde Edmonds, Esq. A substitution of attorney was filed on May 3, 2000.

On June 7, 9, and 22, 2000 the attorney for the plaintiffs, Brian D. Schwartz, wrote to respondent asking for documents that had been previously requested. Respondent did not reply to these letters. On July 12, 2000 Schwartz filed a motion to compel more specific answers to interrogatories and the production of the requested documents. Although respondent did not oppose the motion, on July 31, 2000 he sent Schwartz another set of documents purporting to be the requested items. By letter dated August 2, 2000 Schwartz informed respondent that the documents did not satisfy his prior discovery requests because some items were missing.

Meanwhile, on July 28, 2000 respondent filed a complaint to settle the estate account. On August 3, 2000 the Surrogate's office returned respondent's pleadings because of several procedural deficiencies. On the same date the court entered an order requiring respondent to produce the requested documentation to Schwartz and provide more responsive answers to interrogatories. The order also required the executrix, Johnson, to provide an explanation, within ten days, for any requested document that either did not exist or was not in her possession. Respondent did not comply with the terms of the order. In fact, Johnson testified at the DEC hearing that she knew nothing about it. Johnson testified in the probate matter that, in each instance when respondent "dropped the ball," he told her that he would rectify the situation.

Thereafter, Schwartz again reviewed all the documents received from respondent. In an August 23, 2000 letter to respondent, Schwartz stated as follows:

> I have reviewed each and every documents [sic] which you have sent to me over the past few weeks. Unfortunately, many of them are duplicates and most of the documents which I requested in my letter dated June 8, 2000 still have not been provided.

Schwartz then detailed sixteen paragraphs of requests for unfurnished information. Finally, Schwartz warned respondent that he would file a motion to suppress Johnson's pleadings if the information was not forthcoming.

Having heard nothing from respondent, on August 28, 2000 Schwartz filed a motion to suppress Johnson's pleadings, which was granted.[1] On September 12, 2000, Schwartz wrote to the court to adjourn the trial, scheduled for the following month,

[1] The record does not specify what these pleadings were.

because of the incomplete discovery issues and Johnson's failure to provide an accounting for her administration of the estate.[2]

Once again, Schwartz wrote to the court on October 2, 2000 to request that the matter be removed from the court's trial calendar, as Johnson's pleadings had been suppressed. He then filed a motion to remove Johnson as executrix because of respondent's failure to comply with discovery requests and to provide an accounting. On October 30, 2000 respondent opposed the motion and filed a cross-motion to restore Johnson's pleadings, citing Johnson's cooperation in supplying to the plaintiffs every document in her possession, "numerous times." Indeed, for the remainder of the representation respondent continued to assert that he had adequately complied with Schwartz' discovery requests. The return date of the motions was set for November 9, 2000.

Respondent and his client failed to appear on the return date of the motions.[3] Respondent testified at the DEC hearing that he had called the court from Somerset County, where he had another matter that morning. According to respondent, his matter in Somerset was delayed, of which he tried several times to inform Union County court officials.[4] Apparently unaware of respondent's predicament, the court delayed the 10:30 a.m. argument for one hour and then heard the matter.

---

[2] In an October 2, 2000 letter to respondent, Schwartz acknowledged receipt of additional documents during the previous few days. However, it appears from the letter that the new information was of little value and that much information still had not been produced.

[3] Respondent told Johnson that her appearance was not required.

[4] The Surrogate's office had no record of respondent's call. However, it was conceded at the DEC hearing that respondent called at least once to report his lateness.

On November 30, 2000 the court entered an order removing Johnson as executrix, denying Johnson's motion to reinstate her pleadings and appointing the plaintiffs as administrators of the estate. Finally, the court ordered Johnson to deliver to the new administrators all of the records and assets of the estate within ten days of the court order. Apparently, respondent continued as attorney for the estate.

On December 28, 2000 respondent called Schwartz to discuss the case. Schwartz requested all original documents pertaining to the estate, as well as the remaining funds in the estate account. On January 15, 2001 Schwartz sent a confirming letter in that regard.

After the telephone communication on December 28, 2000, Schwartz heard nothing more from respondent. On February 1, 2001 Schwartz filed a motion to enforce litigant's rights and to request a bench warrant to bring Johnson before the court to explain why she had not complied with the court's prior orders. That motion was served on both respondent and Johnson by certified mail. After several adjournments, the matter was set for March 1, 2001, at which time neither respondent nor Johnson appeared. The judge entered an order on March 14, 2001, requiring respondent's and Johnson's appearances in court on March 29, 2001.

On March 27, 2001 Schwartz received correspondence from an attorney, Steven A. Caputo, stating that Johnson had retained him. On March 29, 2001 Caputo and Johnson appeared in court, at which time respondent turned over bank passbooks and a check from Clyde Edmond's (respondent's predecessor) trust account. At that proceeding, the court revealed its dissatisfaction with respondent's handling of the case.

On April 17, 2001 the court ordered Johnson's arrest if she did not comply with prior court orders. The court also awarded plaintiffs attorneys' fees in the sum of $940, entered as judgments against Johnson and respondent ($470 each).

It appears that thereafter Caputo thereafter placed the matter back on tract. At a September 27, 2001 hearing, the court considered attorneys' fees and sanctions. By that time, sanctions against Johnson exceeded $7,000. The court withdrew the sanctions, stating as follows:

> With respect to the sanctions, it is true that the Court did impose sanctions against Caroline. The Court isn't sure whether Caroline is up to the responsibility of having been an executor in the first place. She seemed confused. Indeed she did not seem to be familiar with her duties and responsibilities, and she relied heavily on two lawyers, who will remain nameless for the moment, but whose names have been recited in the record and both practice in Plainfield, New Jersey. Their services to her were next to nothing. Completely out of the range of what a client would expect an attorney to do. She was to some extent left to swim for herself.
>
> [Exhibit J-44 at 11-12]

Johnson testified at the DEC hearing that respondent did not inform her of many important aspects of the case. She recalled that, early in the case, they discussed Schwartz' request for documents. However, she did not recall seeing any of Schwartz' motions or letters to respondent, with the exception of Schwartz' initial letter of June 7, 2000. In fact, Johnson testified that she always had to reach out to respondent for information about the case.

Johnson testified that her next communication with respondent was about the November 2000 return date of the motions. According to Johnson, respondent told her

that her appearance was not necessary. Shortly after the motions were heard, she again contacted respondent, who told her that he had been delayed on that day and that she had been removed as executrix, but that he intended to file a motion for reconsideration. Johnson did not know if respondent ever filed that motion.

Johnson also testified that she was unaware of several other important aspects of the case. For example, she did not know that the court had rejected the accounting prepared and filed in May 2000. Likewise, she thought that respondent had opened a separate account for any estate funds that were received in cash form. Respondent had not, however.

Finally, Johnson testified that she received Schwartz' motion to enforce litigant's rights directly from Schwartz, in early February 2001, and that she immediately made several unsuccessful attempts to reach respondent. It was also at that time, she claimed, that she realized for the first time that respondent had not turned over to the plaintiffs all of the contents of the file. She was particularly concerned that "some checks were missing" and that envelopes with cash totaling several hundred dollars had not been produced, although she had delivered them to respondent. For all of those reasons, she testified, she retained Caputo to take over the representation in early March 2001.[5]

For his part, respondent asserted that he had handled the case appropriately. He claimed that he had "constantly" tried to comply with Schwartz' requests for discovery, but was unable to get the information requested:

---

[5] Respondent subsequently recovered the unopened envelopes of cash and several other missing items, which were in a box that he later turned over to Caputo.

> And we attempted to answer the questions accurately. There are many things that perhaps I didn't have or couldn't get immediate – in the time frames that Mr. Schwartz was seeking, but I was constantly trying to provide the documents. Some things, he asked for a listing agreement for the sale of the house which I never had. I contacted the – I contacted Mr. Edmonds, I contacted the real estate office to see if they had an agreement, and I couldn't get a copy of any listing agreement from anyone.

There is nothing in the record to corroborate respondent's testimony that he either attempted to obtain the balance of the documents requested by Schwartz or, in the alternative, informed Schwartz that those documents were unavailable.

With regard to the November 9, 2000 return date of Schwartz' motion and respondent's cross-motion, which proceeded without him, respondent testified that he was delayed in Somerset County on another matter. By the time he arrived in Union County, he claimed, the court had already held oral argument. He was told that the judge had ruled against his client. Respondent recalled drafting a motion for reconsideration, but conceded that he did not complete it or file it. The record contains no evidence of that motion. In fact, the file provided by respondent contains only his initial complaint for settlement of the estate account, a July 31, 2000 letter from him to Schwartz and the October 2000 motion to restore Johnson's pleadings. When asked why he had not filed a motion for reconsideration, respondent replied that the judge seemed predisposed not "to accept much of what we were presenting to the court."

Respondent also testified that, when he spoke to Johnson in late November or early December 2000, she told him that she was dissatisfied with his representation. He claimed that, because he believed that she intended to retain a new attorney, he took no further action in the matter. He conceded, however, that he never memorialized that

conversation in writing. It was not until the following year that respondent received official notice that he had been discharged from the representation.

Respondent neither mounted a vigorous defense to each allegation against him nor denied the receipt of Schwartz' correspondence and pleadings over the course of his representation. He generally alleged that, early in the case, he had given Schwartz everything he had. In fact, at the DEC hearing respondent was still perplexed that the probate judge had been upset with him. He testified as follows:

> Mr. Caputo had called me once and said that there had been a court hearing and [the judge] was angry at me and Mrs. Johnson, and I said, 'what is he angry at me for?' And he said, 'for not providing documents.' And I said 'I provided everything I had. I gave her everything. I provided everything to Mr. Schwartz. I gave everything to Mrs. Johnson.'

Finally, the complaint alleges that respondent failed to cooperate with the investigation of this ethics matter. On May 14, 2001 the DEC investigator wrote to respondent advising him of the grievance and requesting a prompt reply. On June 1 and 4, 2001 respondent left voice mail messages for the investigator, promising a reply by June 6, 2001. No response was forthcoming. On June 19, 2001 respondent wrote to the investigator, requesting additional time to reply. On that date, the investigator wrote to respondent advising him that a response was required "forthwith."

On July 2, 2001 respondent requested a personal meeting with the investigator. The investigator declined, stating in a letter to respondent that a written response was required before a meeting could take place. According to the DEC, respondent's written reply, dated September 7, 2001, was largely unresponsive to the grievance.

Finally, although the formal ethics complaint was filed in or about November 27,

2001, respondent did not file an answer until February 4, 2002.

* * *

The DEC found violations of RPC 1.1(a) and RPC 1.3 for respondent's "mishandling" of and "inattention to" the litigation; RPC 3.2 for his failure to expedite the litigation or treat the parties to the litigation with courtesy and consideration, including Johnson, who "was frequently unaware of the events detrimental to her interest which were occurring in the case;" RPC 3.4(d) for his failure to comply with discovery requests; RPC 8.4(d) for his failure to comply with discovery requests, thereby interfering with the administration of the case; and RPC 8.1(b) for his delay in replying to the grievance and answering the complaint. The DEC found no clear and convincing evidence of a violation of RPC 4.4.

The DEC recommended a three-month suspension and a proctorship for one year.

* * *

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.

Respondent mishandled Johnson's matter almost from the outset. His adversary, Schwartz, vigorously pursued him for answers to interrogatories, documentation regarding the estate's assets and an accounting of Johnson's handling of the estate's assets. Schwartz wrote to respondent asking for information about the case and filed motions to compel Johnson to act. Indeed, during the summer and fall of 2000, Schwartz sent respondent at least five letters seeking discovery. Schwartz filed motions that

resulted in two court orders against Johnson, one requiring the production of documents and the other suppressing Johnson's pleadings, as a result of her repeated failure to produce the documents. Respondent did not reply to Schwartz' numerous letters, oppose the motions that paved the way for the orders, or explain to his client, the court or his adversary his repeated failure to participate in the court proceedings.

Respondent's only significant actions in the case were his attempt to file a procedurally defective accounting of the estate's assets, which the probate court promptly rejected, and a November 2000 motion to restore Johnson's pleadings, which the court had earlier stricken. Respondent seemed unconcerned at the time that other discovery issues, such as the request for more specific answers to plaintiffs' interrogatories, remained unresolved. In fact, he appeared unconcerned about court orders entered against him and Johnson, one of which threatened her arrest. Moreover, respondent had no reasonable explanation for his chronic failure to attend to the case.

In light of the foregoing, we found that respondent's conduct violated RPC 1.1(a), RPC 1.3 and RPC 3.2. We also found that respondent's repeated failure to comply with discovery orders violated RPC 3.4 and failure to comply with court orders violated RPC 8.4(d).

One other point deserves mention. Johnson testified that respondent did not inform her of many important aspects of the case, such as the need for a new accounting or more complete answers to interrogatories. Although respondent was not specifically charged with violations of RPC 1.4(a), the record developed below contains clear and convincing evidence of a violation of this rule. Furthermore, respondent did not object to the

admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

As to the allegation of a violation of RPC 8.1(b), the record shows that respondent failed to reply to the grievance for three months, but attempted to meet with the DEC investigator during that time. Also, once the complaint was filed, respondent prepared an answer, albeit somewhat belatedly. Although we do not condone tardiness, respondent ultimately cooperated with the ethics authorities in the processing of the matter, filing an answer and testifying at the DEC hearing. On that basis, we dismissed the charge of a violation of RPC 8.1(b).

As to the charge that respondent violated RPC 4.4, that rule states as follows:

> In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

There is no evidence in the record that respondent violated this rule, which addresses intentional delay and other improper litigation tactics by attorneys. Therefore, we also dismissed the allegation of a violation of RPC 4.4.

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 3.2, RPC 3.4 and RPC 8.4(d).

Attorneys who ignore court orders, whether the misconduct appears alone or with other forms of unethical behavior, will generally receive discipline ranging from an admonition to a short term of suspension. This is true even if the attorneys have a

disciplinary record. See, e.g., In the Matter of Santo J. Bonanno, Docket No. DRB 97-238 (September 30, 1997) (admonition imposed where the attorney failed to act diligently in one client matter and failed to comply with a court order in another matter); In re Milstead, 162 N.J. 96 (1999) (reprimand imposed where the attorney improperly released $103,000 held in escrow under a court order, thus breaching not only that court order, but also his fiduciary duty as an escrow agent); In re Skripek, 156 N.J. 399 (1998) (reprimand imposed after a New York court's ruling of civil contempt for failure to obey a court order in the attorney's own matrimonial matter); In re Hartmann, 142 N.J. 587 (1995) (reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest, and for discourteous and abusive conduct toward a judge with intent to intimidate her); In re Saavedra, 162 N.J. 108 (1999) (three-month suspension imposed where the attorney undertook representation of a juvenile in connection with a delinquency complaint and appeared in court once without being paid a fee, based upon his prior relationship with the family; the attorney failed to appear for trial and improperly withdrew without seeking leave of court; the attorney then ignored a court order to appear on a rescheduled trial date; prior three-month suspension); and In re Saavedra, 147 N.J. 269 (1997) (three-month suspension where the attorney grossly neglected two client matters, failed to return an unearned retainer and disregarded a court order to appear, resulting in the issuance of a warrant for his arrest; prior private reprimand and reprimand); .

Here, although respondent's misconduct was serious, there is no evidence that he acted with knowledge and deliberation when he did not comply with discovery orders.

Instead, we were persuaded that his conduct stemmed from his mistaken belief that he had done all that he could or provided all documentation that was available to him. For this reason, we unanimously determined that a reprimand adequately addresses the nature of respondent's conduct. One member did not participate.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Cassell Wood, Jr.
Docket No. DRB 02-193

Argued: July 18, 2002

Decided: October 21, 2002

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman							X
Schwartz			X				
Wissinger			X				
Total:			8				1

Robyn M. Hill 10/30/02
Robyn M. Hill
Chief Counsel