SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-397

IN THE MATTER OF

TERRY G. TUCKER

AN ATTORNEY AT LAW

Decision

Argued: February 7, 2002

Decided: May 17, 2002

Frederic L. Shenkman appeared on behalf of the District I Ethics Committee.

Joseph D. O'Neill appeared on behalf of respondent.

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

This matter was originally before us as a recommendation for an admonition filed by the District I Ethics Committee ("DEC"). Following a review of the record, we determined to bring it on for a hearing. The complaint charged respondent with offensive conduct toward a client, in violation of RPC 8.4(b) (criminal conduct that adversely reflects on his fitness as a lawyer) and (d) (conduct prejudicial to the administration of

justice). Respondent admitted that the underlying incident occurred as described by the grievant.

Respondent was admitted to the New Jersey bar in 1985. He is engaged in the practice of law in Bridgeton, Cumberland County. He has no history of discipline.

Respondent represented Marlene Wilgus (formerly Zimmerman) and her then-husband in a bankruptcy proceeding. On June 15, 2000 Wilgus went to respondent's office to sign an amendment to her bankruptcy pleadings. While Zimmerman was signing the documents, respondent stood behind her and lifted the back of her sweater. When Wilgus pulled her sweater back down, respondent placed his hand over her shoulder, pulled her sweater out slightly and asked if he could have a "peek." Wilgus replied "no, we don't go there." Respondent did not touch Wilgus' skin. While Wilgus was finishing signing the documents, respondent again asked if he could have "a little peek." Wilgus said "no" and left respondent's office.[1]

Wilgus filed a grievance against respondent on June 20, 2000, five days after the incident.[2] She telephoned him shortly thereafter about a legal question. Respondent advised her that he had received the grievance and apologized for his behavior. Wilgus told respondent that her reaction to his conduct was based on two previous incidents of unwanted sexual advances by other individuals.

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[1] In her testimony, Wilgus described her interaction with respondent before the incident in question as "a little flirtatious back and forth," but with nothing sexual intended.

[2] In respondent's reply to Wilgus' grievance, he stated that her account of the events was "wholly accurate" and admitted that his "silly and annoying conduct [was] indefensible."

Wilgus and respondent had several additional conversations. Respondent continued to represent Wilgus and her husband through the remainder of their bankruptcy proceeding.

Wilgus testified that she believed that respondent's apology was sincere and stated that she did not want his license revoked or suspended.

The complaint alleged that respondent's conduct constituted an "offensive touching," as defined by N.J.S.A. 2C:33-4 (harassment), and, therefore, a violation of RPC 8.4(b). The complaint also charged respondent with a violation of RPC 8.4(d).

* * *

The DEC recommended that respondent receive an admonition, finding a violation of RPC 8.4(d) only. The DEC concluded that there was no violation of RPC 8.4(b), because "there was no touching of the skin, there was no touching of intimate parts." The DEC noted respondent's apology to Wilgus, his remorse, his cooperation with the ethics system, the unlikely possibility of recurrence, the isolated nature of the incident and the fact that Wilgus did not want him to be suspended or disbarred.

* * *

Following a de novo review of the record, we found that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. Albeit for a different reason, we agreed with the DEC's determination that RPC 8.4(b) was not violated. In a similar matter, we declined to make a finding of

criminal conduct and stated in our decision that, "because the Board does not deem itself to be the appropriate tribunal to make criminal findings, the Board determined to refrain from making such a determination in this case." In re Pearson, 139 N.J. 230 (1995). The Court agreed and found only a violation of RPC 8.4(d).

Undeniably, respondent's conduct lacked professionalism and violated his client's right to feel safe during consultations with her attorney. In that sense, respondent's conduct violated RPC 8.4(d).

There remains the issue of discipline. Reprimands have been imposed in cases dealing with an attorney's sexual misconduct toward clients. See In re Pinto, 168 N.J. 111 (2001) (reprimand for attorney's inappropriate comments of a sexual nature to his client and improper touching); In re Hyderally, 162 N.J. 95 (1999) (attorney reprimanded, on a motion for reciprocal discipline, for making sexual advances to two legal-aid clients); In re Pearson, supra, 139 N.J. 230 (1995) (attorney publicly reprimanded for improperly touching his client and making inappropriate comments about her chest); In re Rea, 128 N.J. 544 (1992) (attorney publicly reprimanded for having a sexual relationship with a client who, because of her past history and mental health, lacked the capacity to freely consent to the relationship); In re Liebowitz, 104 N.J. 175 (1985) (attorney publicly reprimanded for sexual misconduct toward an assigned client). But see In re Seaman, 133 N.J. 67 (1993) (sixty-day suspension without pay; the Court found that Judge Seaman's remarks of a sexual nature to his law clerk, his lifting of her skirt, placing his hand under her skirt and attempting to place her hand on his crotch constituted sexual harassment and violated, among other canons, Canon 3A(4) of the

Code of Judicial Conduct, providing that a "judge should be impartial, and should not discriminate because of ... sex...").

Although respondent's conduct might not have been as egregious as that in Liebowitz, it was nevertheless serious. Moreover, respondent ignored his client's rebuffs, by not taking them seriously, and continued to make improper proposals. Although his client acknowledged that their interaction had been a "little flirtatious," she had every reason to expect freedom from offensive and improper touching by her attorney, in whom she had reposed confidence and trust by virtue of his professional status. We are convinced that, in similar situations, nothing short of a reprimand will adequately address the seriousness of the attorney's conduct and preserve the public's confidence in the profession. We, therefore, unanimously voted to reprimand respondent. One member did not participate.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Terry G. Tucker
Docket No. DRB 01-397

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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 5/29/02
Robyn M. Hill
Chief Counsel