SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-322

IN THE MATTER OF

CAROLYN E. ARCH

AN ATTORNEY AT LAW

Decision

Argued: December 20, 2001

Decided: April 2, 2002

Jonathan O. Bauer appeared on behalf of the District VA Ethics Committee.

Respondent appeared *pro se*.

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

This matter was before us based on recommendations for discipline filed by the District VA Ethics Committee ("DEC"). The complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.4(a), *RPC* 8.1(b) (failure to

respond to a lawful demand for information from a disciplinary authority) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1965. She maintains a law office in Newark, New Jersey. In 1991, she received a private reprimand for gross neglect, lack of diligence, failure to comply with a client's reasonable requests for information and failure to withdraw from representation after the client requested the return of the file.

The grievance in this matter was filed by a former client, Kenneth Wardlaw, who was first referred to respondent by a co-worker. Because, at the time of the hearing, Wardlaw could not be located, the matter proceeded without his testimony. The presenter relied on the testimony of the OAE investigator and the documentary evidence, including the grievance. The Supreme Court denied respondent's motion for leave to appeal the decision to proceed with the hearing in the absence of the grievant.

On April 13, 1995, Wardlaw met with respondent to discuss his matrimonial matter and the possibility of retaining her to represent him. During the conference, which lasted for more than three hours, they reviewed Wardlaw's case and his options. Wardlaw's wife had obtained a judgment in Pennsylvania that dissolved the parties' marriage, but did not address matters such as child support and custody, alimony, equitable distribution, allocation of debts and other similar issues. At the end of the conference, Wardlaw had not decided whether to retain respondent.

On April 19, 1995 Wardlaw notified respondent that he had received a complaint for child support, which he then "faxed" to her. The complaint bore a return date of May 24, 1995. After respondent reviewed the standard Uniform Reciprocal Enforcement of Support Act (URESA)[1] complaint, she informed Wardlaw that, despite the Pennsylvania divorce, his wife had indicated in the complaint that they were still married. She also pointed out that, although according to Wardlaw his wife was employed, the wife had stated in the complaint that she was not. Respondent explained to Wardlaw that, because the support complaint had been filed in the non-dissolution unit of the family part, only support issues could be determined. She suggested that she file a motion to dismiss the support complaint and, simultaneously, file a complaint in the dissolution unit to set the amount of support and to resolve equitable distribution, child custody and other remaining issues. In this fashion, all issues would be consolidated and resolved in one proceeding. Because the mandatory child support guidelines would be applied in either venue, the amount of child support ordered would be the same, whether in the dissolution or non-dissolution unit. Respondent also urged Wardlaw to try to resolve the matter amicably with his wife.

On April 25, 1995 Wardlaw "faxed" a settlement proposal to respondent, outlining his position on the various issues. In an April 29, 1995 letter, respondent replied that the proposal appeared fair and reasonable and could be implemented through a settlement

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[1] *See N.J.S.A.* 2A:4-30.24 *et seq.* In 1998, URESA was repealed and replaced by the Uniform Interstate Family Support Act (UIFSA), *N.J.S.A.* 2A:4-30.65 *et seq.*

agreement that would be filed in the dissolution unit, superseding the pending non-dissolution complaint. Because Wardlaw had not yet retained respondent, she reminded him that she required a $1,200 retainer and that her hourly fee was $125.

On May 1, 1995 Wardlaw notified respondent that he wanted her to represent him. On that same day, respondent sent Wardlaw a letter retainer agreement signed by her. According to the letter, respondent agreed to file a complaint in the dissolution unit, addressing child custody and visitation, child and spousal support, equitable distribution of property, equitable allocation of debts, tax consequences and counsel fees and costs. The agreement further provided that the pending URESA action would be either dismissed or merged with the anticipated dissolution action. The agreement reiterated the hourly fee of $125 and the required $1,200 retainer. Respondent asked Wardlaw to sign and return the agreement, along with the retainer and a $135 check for filing the complaint. Although Wardlaw submitted two $625 checks, which respondent received on May 5 and June 3, 1995, respectively, he did not submit the $135 filing fee or return a signed copy of the retainer agreement.

On May 3, 1995 respondent received copies of two letters that Wardlaw proposed sending to Evon, his former wife, asking respondent to comment on them. On that same day, after reviewing the proposals, respondent told Wardlaw that they were too harsh and that a "softer touch" was needed. The next day, respondent sent a letter to Evon listing the items that Wardlaw wished to resolve and asking that she refer the letter to her attorney. On May 6,

1995 respondent sent a letter to Wardlaw, asking him to provide a copy of the Pennsylvania divorce decree as well as employment information about Evon.

On May 10, 1995 Wardlaw "faxed" to respondent a copy of the divorce decree. Because the printing on the copy sent to respondent was askew, only a portion of the decree appeared on the page. According to respondent, she left a message on Wardlaw's voicemail, asking him to send another copy. On May 14, 1995 respondent sent a follow-up letter to Evon, asking her if she were interested in resolving the matters by agreement. In a May 18, 1995 letter, Wardlaw informed respondent that Evon would not discuss settlement with him. He asked respondent to file a motion to dismiss the support complaint and to file a complaint in the dissolution unit. According to respondent, she immediately told Wardlaw that, because it was too late to file a motion to dismiss the non-dissolution complaint, he would be required to appear at the support hearing and she would file a dissolution complaint as well as a motion to consolidate the two matters. In his grievance, however, Wardlaw stated that he left three messages for respondent on May 12, May 22 and May 23, 1995, inquiring whether he was required to attend the support hearing. According to the grievance, Wardlaw left one message on an answering machine and two with respondent's partner, Raymond Goodwin. Wardlaw elected not to attend the support hearing, relying on the fact that he had asked respondent to move to dismiss the complaint. Although neither the OAE investigator nor respondent knew if a bench warrant had been issued, it is clear from the record that Wardlaw was not arrested for not attending the hearing.

There was no further activity in the matter until August 8, 1995 when, after Wardlaw repeatedly received busy signals upon calling respondent's office, he "faxed" a letter to her asking for an update. The next day, Wardlaw left a message with Goodwin for respondent to telephone him. On August 10, 1995 Wardlaw "faxed" to respondent a letter informing her that his lender had threatened to bring foreclosure proceedings because his mortgage had not been paid since May. Wardlaw stated in the letter: "I anticipate requiring your services to either draft an agreement regarding the splitting of the proceeds of the sale, or to proceed with the original request for filing a plenary action." He also expressed concern that respondent had not acknowledged his earlier communications. Respondent testified that she had been away from the office and did not receive Wardlaw's faxes and messages until August 10, 1995. At that time, she reviewed the file, determined that Wardlaw had not sent her a clear copy of the Pennsylvania judgment and sent an August 10, 1995 letter to him requesting a legible copy. According to respondent, she concluded that, contrary to her advice, Wardlaw had submitted the proposals to Evon and failed to pay the mortgage, which was now in default.

At the ethics hearing, there was a controversy on whether respondent had submitted documents to the court for filing. According to respondent, on August 14, 1995, after she had received a clear copy of the Pennsylvania judgment, she submitted to the Superior Court in Gloucester County a complaint and a motion to consolidate the dissolution complaint with the non-dissolution support matter. Respondent testified that, because she did not know the

amount of the fee for filing the motion, she enclosed a blank check for the filing fees as well as a self-addressed stamped envelope for the return of copies, stamped "filed." Respondent contended that, in accordance with instructions from the United States Postal Service, when she uses a meter to stamp pre-paid postage on return envelopes, she does not insert a date because she does not know when the envelope will be mailed. Respondent explained that, the postage for the return envelope ($.55) was stamped on the package to the court and the postage for the package to the court ($1.47) was stamped on the return envelope, causing the mailing to be returned to her office on August 26, 1995 for insufficient postage.

Respondent introduced into evidence a copy of the package returned by the post office and a copy of the return envelope that had been enclosed with the pleadings. Exhibits Wardlaw-8, Arch 32-W and Arch 33-W. Although the photocopies were difficult to read because of poor copy quality, it is clear that the return envelope was stamped with $1.47 postage, when it should have had been $.55. During the first day of hearings, respondent had expressed concern that her original client file, which she had sent to the OAE in reply to the grievance, had not been transmitted to the presenter. A panel member indicated that he would telephone the OAE to determine the current location of respondent's original file. During the second day of hearings, upon respondent's inquiry, the panel member stated merely that "the committee doesn't have any additional originals in its possession."

On August 16, 1995 Wardlaw "faxed" to respondent a copy of a letter that he had sent to his lender, authorizing respondent to discuss the foreclosure action. Wardlaw also directed

respondent to send a letter asking Evon to agree to sell the marital home. Respondent stated that she left a message on Wardlaw's voicemail, informing him that she had not been retained to handle the foreclosure proceeding, that he had no defense to it and that his options were to pay the past-due mortgage payments, refinance or sign a deed in lieu of foreclosure.

According to Wardlaw's grievance, also on August 16, 1995, he left a message with Goodwin that, if respondent did not immediately reply to his call, he would seek a refund of the retainer. On August 23, 1995 Wardlaw telephoned the family division at the Gloucester County courthouse and was told that, if he had not heard anything since the May 24, 1995 hearing date, his support matter would be rescheduled and he would receive notice of the new hearing date.

On August 24, 1995 Wardlaw "faxed" a letter to respondent, complaining that she had not performed the services for which she had been retained, requesting a refund of $1,275 and indicating that he would delay contacting the OAE and the fee arbitration committee, if she replied immediately. He then left a message for respondent on August 25, 1995. On that day, Wardlaw's co-worker, who had referred him to respondent, notified respondent that Wardlaw had given her a "slanderous letter" about respondent, asking her to circulate it throughout the workplace. Respondent sent a "fax" to Wardlaw, denying any responsibility for the foreclosure status of his mortgage or for a bench warrant that may have been issued for his failure to appear at the support hearing. She stated that the motion and complaint had been forwarded to the court for filing, that the complaint would be forwarded for service

after she received a filed copy with a docket number and that, as he had requested, she would have the file "billed out."

On August 25, 1995 Wardlaw "faxed" a letter to respondent, complaining about her failure to keep him informed of the status of his case and requesting copies of the motion and complaint. On September 10, 1995 respondent sent to Wardlaw her fee statement for $1,352.02 as well as copies of the motion and complaint, informing him that the pleadings had been forwarded for filing. Wardlaw filed the grievance on September 13, 1995.

* * *

Because respondent was charged with failure to cooperate with a disciplinary authority, a review of the facts surrounding the communications between respondent and the OAE is necessary. On January 31, 1996 the OAE sent the grievance to respondent, requesting a reply within ten days. Although the grievance was sent to respondent's office, the address did not contain the suite number. On March 13, 1996 the OAE investigator sent a follow-up letter, asking for a reply by March 25, 1996 and notifying respondent that failure to reply could result in a charge of a violation of *RPC* 8.1(b). The next day the investigator telephoned respondent, who informed him that she had not received the grievance and that the file had been closed out and would have to be recalled. Although he "faxed" the grievance to respondent that same day, the top portion of the grievance form was not

transmitted. In addition, because he did not send a copy of the January 31 or the March 13, 1995 letters, respondent was not notified of the ten-day deadline for replying to a grievance.

On April 18, 1996 respondent "faxed" a memo to the investigator, informing him that the *Wardlaw* file had been misfiled, that she anticipated receiving it the next day and that she would reply to the grievance five days after she received the file. As discussed below, a substantial period of time elapsed between the investigation of the grievance and the hearing. Because of this passage of time, the investigator could not recall having received that communication. Respondent introduced evidence showing that the "fax" was sent to the same telephone number from which the investigator had "faxed" the grievance to respondent and that the transmission to him had been successful.

On April 28, 1996 respondent replied to the grievance and, as mentioned above, sent her original client file to the OAE. At the ethics hearing, the OAE investigator testified that respondent's April 28, 1996 letter was her first written reply to the grievance. Nonetheless, despite this testimony acknowledging receipt of respondent's reply to the grievance, and despite respondent's introduction into evidence of her return receipt card evidencing delivery of the reply to the OAE, the formal ethics complaint contained a charge that respondent had not replied to the grievance.

* * *

It is notable that more than four years passed from the filing of the ethics complaint on June 13, 1996 to the hearings on September 21 and November 29, 2000. Because of this substantial lapse of time, the investigator was unable to recall certain details of the 1996 investigation.

* * *

The DEC found that respondent violated the *Rules of Professional Conduct*, as charged in the complaint. Specifically, the DEC found that, beginning in mid-May, respondent "abandoned" Wardlaw by failing to file the motion to dismiss the support complaint and by failing to notify him that she would not attend the support hearing. The DEC accepted Wardlaw's statement in the grievance that he had left three telephone messages for respondent, asking whether he should attend the hearing, over respondent's testimony that she did not receive those messages and that she left a message advising Wardlaw to attend the hearing. The DEC rejected respondent's explanation that she could not file the complaint until she received a complete copy of the Pennsylvania judgment, pointing out that, although the printing on the page that Wardlaw had "faxed" had been askew, it was legible and contained all of the required information.

The DEC found that respondent violated *RPC* 1.1(a) and *RPC* 1.3, by failing to file the motion and complaint and by failing to attend the support hearing. The DEC further

concluded that respondent's failure to communicate with Wardlaw from May through August and to return his telephone calls violated *RPC* 1.4(a). The DEC also found that respondent violated *RPC* 8.4(c), by misrepresenting to Wardlaw that she had filed the complaint and motion to consolidate and by covering up her actions, when she claimed that the package had been returned for insufficient postage.

Finally, the DEC found that respondent's failure to reply to the grievance within ten days violated *R.*1:20-3(g)(3).

The DEC recommended a two-year suspension.

* * *

Following a *de novo* review, we found that the DEC's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence. Because the record does not contain clear and convincing evidence that respondent violated *RPC* 1.1(a), *RPC* 8.1(b) or *RPC* 8.4(c), we dismissed those charges.

It is undisputed that, in early May, Wardlaw retained respondent to file a dissolution complaint and a motion either to dismiss the non-dissolution support complaint or to consolidate the two matters. To that end, respondent reviewed the support complaint, sent two letters to Evon, assessed Wardlaw's procedural options and encouraged him to discuss settlement with Evon. Thereafter, from May 14 to August 10, 1995 respondent took no action

in the matter. According to respondent, she had not filed the motion or complaint for the following reasons: (1) although, on May 10, 1995, she asked Wardlaw for a complete copy of the Pennsylvania divorce decree, she did not receive it until approximately August 14, 1995; (2) Wardlaw had not submitted the $135 fee to respondent for filing the complaint, despite her request therefor; (3) there was no particular urgency to file the pleadings because the parties had already obtained a divorce decree; and (4) the parties were negotiating amicably and she did not wish to jeopardize a potential settlement by filing a complaint.

Respondent's failure to take any action in the matter for approximately three months amounted to a lack of diligence. In May, she asked Wardlaw for a complete copy of the divorce decree; however, she failed to send a follow-up request until August 10, 1995. Similarly, if respondent required the $135 filing fee in advance, she should have reminded Wardlaw of that requirement, instead of merely relying on the reference to the filing fee in the retainer agreement. Although respondent claimed that the parties were negotiating a settlement, on May 18, 1995 Wardlaw notified her that Evon would not discuss settlement with him. Respondent was on notice that no settlement discussions were taking place and, therefore, there was no risk of jeopardizing a potential settlement by filing the complaint. Moreover, although respondent may have informed Wardlaw that she would not attend the support hearing and that he should appear on his own, she should have reminded him, in writing, that it was necessary for him to appear. Her failure to do so violated *RPC* 1.3.

Respondent also violated *RPC* 1.4(a) by failing to return Wardlaw's telephone calls and to inform him of the status of the matter. She did not dispute the fact that she did not communicate with Wardlaw from May through August 1995. Respondent testified that, if he had any concerns, he should have contacted her. The record demonstrated that Wardlaw left numerous messages, both on an answering machine and with respondent's partner, Goodwin, and sent numerous "faxes" to her, without receiving a reply. Respondent's failure to communicate with Wardlaw constituted a violation of *RPC* 1.4(a).

Respondent's actions, however, did not amount to gross neglect. Although respondent failed to either attend the hearing or urge Wardlaw to do so, no serious consequences arose from such failure. Wardlaw was not arrested for his non-appearance. To the contrary, he was informed by court personnel that the matter would simply be rescheduled. As respondent pointed out, there was no statute of limitations, filing deadline or other urgent circumstance that required immediate attention. We, thus, dismissed the charge of a violation of *RPC* 1.1(a).

The DEC found that respondent violated *RPC* 8.4(c), by misrepresenting to Wardlaw that she had filed the motion and complaint and later by trying to conceal her deceit by claiming that the pleadings had been returned for insufficient postage. Although the complaint charged that respondent had misrepresented to Wardlaw that the pleadings had been filed, it made no mention of respondent's later concealment. Respondent, however, had not stated that the pleadings had been "filed." A review of respondent's September 10, 1995

letter shows that she represented to Wardlaw that the complaint and motion had been "forwarded for filing." The DEC's conclusion that respondent fabricated evidence is not supported by the record. There was no indication that the returned envelope from the post office was other than what it purported to be. The copies of the returned envelope introduced into evidence bear no indication that they were created by respondent. Respondent submitted her original file on April 28, 1996. Presumably, that file contained the original envelope returned by the post office. Respondent should not be penalized because the original envelope was not introduced into evidence.

Furthermore, the reasons given by the DEC do not support rejecting respondent's contention that the package had been returned by the post office. The DEC determined that twelve days is an "unusually long time" to elapse before mail gets returned for insufficient postage. It is not unreasonable to believe, however, that papers mailed from Newark to Gloucester County could take twelve days to be returned. The DEC also relied on the fact that the check that respondent sent for the motion's filing fee was blank. Respondent explained that she enclosed a blank check because, although she was aware of the amount of the filing fee for the complaint, she did not know the amount of the fee for filing the motion. While it would have been more prudent for respondent to inquire about the filing fee or to indicate an amount that the check should not exceed, her enclosure of a blank check does not signify deceit. The DEC also pointed to respondent's failure to serve the motion on Evon Wardlaw. However, it would have been premature for respondent to attempt service until she

had received a filed copy of the pleadings with a docket number. The DEC further noted that the postal service's return to respondent of the package was delayed just until Mr. Wardlaw terminated her representation of him so that the motion never had to be refiled. In our view, the return of the package at the same time that Wardlaw terminated respondent's representation appears to be simply coincidence. Lastly, the DEC mentioned that the postage that respondent affixed to the return envelope bears no date. Respondent explained that the return envelope was intentionally stamped with no date, pursuant to United States Postal Service instructions for using postage meters. Based on the foregoing, we dismissed the charge of a violation of *RPC* 8.4(c).

We also determined that respondent did not fail to cooperate with the DEC. Respondent's testimony that she never received the grievance sent on January 31, 1996 or the March 13, 1996 follow-up letter was not controverted. Moreover, because the documents were addressed to respondent's office without a suite number, it is possible that they were not delivered to respondent's office. Although, on March 14, 1996, the investigator "faxed" a copy of the grievance to respondent, he did not include a copy of the cover letter, which would have notified respondent that (1) the deadline for her reply was ten days and (2) the failure to reply could result in a charge of a violation of *RPC* 8.1(b). Respondent testified that, during a March 14, 1996 conversation, she informed the investigator that, because the *Wardlaw* file had been closed, it would have to be retrieved. On April 18, 1996 respondent "faxed" a memo to the investigator, informing him that she would reply to the grievance

within five days of retrieving the file, which apparently had been misfiled. On April 28, 1996 respondent replied to the grievance. Upon the filing of the formal ethics complaint, she filed a timely answer. Because respondent substantially complied with the *Rules of Professional Conduct*, we dismissed the charge of a violation of *RPC* 8.1(b).

In sum, respondent displayed lack of diligence and failed to communicate with a client. Although she received a private reprimand in 1991, respondent's career of more than thirty-five years is otherwise unblemished. In the following cases, admonitions were imposed on attorneys who were guilty of those ethics violations: *In the Matter of Ronald Thompson*, DRB 97-507 (1998); *In the Matter of Theodore F. Kozlowski*, DRB 96-460 (1998); *In the Matter of Robert S. Miller*, DRB 95-307 (1995); *In the Matter of Scott J. Marum*, DRB 95-273 (1995). Although similar violations have sometimes resulted in the imposition of a reprimand, aggravating factors were present in those cases. *See, e.g., In re Paradiso*, 152 *N.J.* 466 (1998) (client's personal injury complaint was dismissed with prejudice due to the attorney's lack of diligence); *In re Carmichael*, 139 *N.J.* 390 (1995) (attorney failed to communicate with a client and displayed lack of diligence in two matters; in one of the matters the attorney failed to file a complaint within the statute of limitations period).

In light of the foregoing, we unanimously determined that an admonition is the appropriate discipline for respondent's infractions in this matter. Two members recused themselves.

We further required 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 Carolyn E. Arch
Docket No. DRB 01-322

Argued: December 20, 2001

Decided: April 2, 2002

Disposition: Admonition

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:				7		2	

Robyn M. Hill 4/17/02
Robyn M. Hill
Chief Counsel