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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-054
District Docket Nos. IIIB-03-37E
and IIIB-03-34E

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

Decision

Argued: April 21, 2005

Decided: June 8, 2005

Warren S. Wolf appeared on behalf of the District IIIB Ethics Committee.

~~Robia S. Echevarria appeared on behalf of respondent.~~

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

This matter, which was presented below on stipulated facts, was before us on a recommendation for discipline filed by the District IIIB Ethics Committee (DEC). Respondent was admitted to the New Jersey bar in 1988. In 1999, he was admonished for failure to communicate with his client in a divorce action. In the Matter of Scott J. Wood, DRB 98-462 (February 24, 1999). In 2000, on a certified record, respondent was reprimanded for lack

of diligence and failure to communicate with a client whom he had represented in two litigation matters, both of which were dismissed for lack of prosecution. In re Wood, 165 N.J. 564 (2000). In 2003, the Supreme Court censured respondent for gross neglect and failure to communicate with the client. Specifically, respondent allowed an appeal to be dismissed and failed to take any steps to have the appeal reinstated. In re Wood, 177 N.J. 514 (2003).

The Underwood/O'Shea Matter (District Docket No. IIIB-03-37E)

In this matter, Doris Underwood, acting under a power of attorney, retained respondent to file a Chapter 7 bankruptcy petition on behalf of Timothy O'Shea. The complaint charged respondent with lack of diligence (RPC 1.3) in delaying the filing of the petition and failure to communicate with the client (RPC 1.4, presumably (a)) in failing to keep either Underwood or O'Shea informed about the status of the petition, and to comply with Underwood's requests for information.

Alternatively, the complaint charged that, if Underwood were not O'Shea's attorney-in-fact, then respondent's representation of O'Shea through Underwood was grossly negligent and, in light of respondent's ethics history, constituted a pattern of neglect, violations of RPC 1.1 (presumably (a) and (b)). Finally,

respondent was charged with a violation of RPC 8.1(b) for his failure to cooperate with ethics authorities.

According to the stipulated facts, Underwood retained respondent in August 2002. On August 27, 2002, respondent and Underwood (acting on O'Shea's behalf) entered into a legal services fee agreement. In addition, by October 22, 2002, Underwood, acting on O'Shea's behalf, had paid respondent the agreed-upon \$750 fee for his services.

Between October 22, 2002 and September 2, 2003, Underwood repeatedly called respondent and left messages for the purpose of determining whether the petition had been filed and, if not, why not. Neither respondent nor anyone in his office returned Underwood's calls. Moreover, respondent never filed the bankruptcy petition and never informed Underwood or O'Shea of the reason why he failed to do so. Also, respondent did not refund the \$750 fee to Underwood.

On September 2, 2003, Underwood filed a grievance against respondent. Two days later, the DEC secretary sent respondent a copy of the grievance and instructed him to reply by September 19, 2003. Respondent answered the grievance on October 20, 2003, well after the given deadline.

On four different occasions between January 21 and February 27, 2004, the DEC investigator requested respondent's billing

records in the Underwood/O'Shea matter. Respondent neither provided the records nor explained his failure to do so.

Based on these stipulated facts, the parties agreed that respondent had violated certain ethics rules. First, respondent's failure to inform Underwood or O'Shea of the status of the bankruptcy matter, as well as his failure to return Underwood's telephone calls, constituted a violation of RPC 1.4, presumably (a). Second, respondent violated RPC 1.3 when he delayed the preparation of the bankruptcy petition. Third, respondent's failure to produce his billing records to the DEC amounted to a violation of RPC 8.1(b).

~~The Vellucci Matter (District Docket No. LLJD-03-242)~~

On March 7, 2002, Lea Vellucci retained respondent to prepare a property settlement agreement for the purpose of dividing property that she and her husband owned. The complaint charged respondent with lack of diligence as a result of his delay in preparing the property settlement agreement and failure to communicate due to respondent's failure to keep Vellucci informed about the status of the agreement and reply to her requests for information about the document. Finally, respondent was charged with a violation of RPC 8.1(b) for his failure to cooperate with ethics authorities.

The stipulated facts established that, on March 7, 2002, respondent and Vellucci executed a fee agreement, and she paid him a \$1500 retainer. Pursuant to respondent's request, Vellucci completed a draft case information statement, which she delivered to him on June 24, 2002.

On July 29 and August 1, 2002, Vellucci left messages for respondent, but she did not hear from him. Thereafter, respondent scheduled a meeting with Vellucci for September 16, 2002. However, respondent did not appear for the meeting. Instead, respondent's wife Nancy met with Vellucci and gathered information that presumably was relevant to the preparation of the property settlement agreement.

~~On five separate occasions between October 25, 2002 and~~
February 14, 2003, Vellucci requested that respondent update her on the status of the matter. She received no response. On April 10, 2003, Vellucci met with an unidentified person from respondent's office and provided additional information that had been requested of her.

In May and June 2003, Vellucci regularly called respondent's office. Presumably, she was unable to talk to respondent. Finally, at an unidentified time, Vellucci informed the office that she wanted to pick up her file. However, when

Vellucci went to the office to retrieve the file, she was told that respondent had the file with him.

On August 8 and September 24, 2003, attorney George E. Pallas, who is Vellucci's brother, wrote to respondent, informed respondent that he was now representing his sister, and requested that Vellucci's file be forwarded to him.

On October 24, 2003, Vellucci filed a grievance against respondent. Three days later, the DEC secretary sent respondent a copy of the grievance and directed him to reply by November 7, 2003. Respondent did not reply until December 5, 2003, again after the set deadline.

In the meantime, on November 20 and 24, 2003, Pallas's ~~colleague Stanley R. Gentile, Esquire, wrote to respondent and~~ demanded that Vellucci's property settlement agreement be sent to him. Respondent complied with Gentile's request on November 25, 2003, by sending him the agreement "and other documents contained in his file."

On four occasions between January 21 and February 27, 2004, the DEC investigator instructed respondent to produce his billing records. Respondent neither produced the records nor explained his failure to do so.

The parties agreed that respondent violated RPC 1.4 (presumably (a)) when he failed to (1) keep Vellucci updated on

the status of the property settlement agreement and (2) reply to her requests for information regarding the documents. They further stipulated that respondent violated RPC 1.3 when he carried in preparing the property settlement agreement. Finally, the parties agreed that respondent failed to cooperate with ethics authorities, a violation of RPC 8.1(b), when he did not produce his billing records to the DEC.

The parties stipulated that respondent's 1999 admonition, 2000 reprimand, and 2003 censure are aggravating factors. In mitigation, they agreed that (1) respondent has four young children who depend upon him for their support; (2) although respondent never filed the O'Shea bankruptcy petition, he did prepare it; (3) respondent performed "numerous other legal services" on O'Shea's behalf, and he communicated with his client regarding those matters; and (4) respondent performed "numerous other legal services" for Vellucci and communicated with her regarding those matters.

The presenter and respondent consented to a ninety-day suspension of respondent's license to practice law and jointly recommended that penalty to the DEC. Respondent also agreed to refund O'Shea's \$750 fee and Vellucci's \$1500 retainer within ninety days of January 19, 2005.

In the Underwood/O'Shea matter, the DEC found that respondent had violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). However, because Underwood was O'Shea's attorney-in-fact and, therefore, was authorized to retain respondent on O'Shea's behalf, the DEC found that respondent had not committed gross neglect when he took on the representation of O'Shea at Underwood's behest.

In the Vellucci matter, the DEC found that respondent had violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b).

The DEC agreed to the measure of discipline (ninety-day suspension). In so doing, the DEC observed that respondent had not explained his conduct vis-à-vis his clients and the DEC investigator. Moreover, ~~in light of the previous discipline~~ imposed on respondent for similar conduct, the DEC believed that nothing short of a suspension would be "sufficient to correct the consistent dilatory conduct of the respondent in representing his clients."

Following a de novo review of the record, we are satisfied that the stipulated facts clearly and convincingly establish that respondent's conduct was unethical.

In the Underwood/O'Shea matter, the DEC properly found that respondent violated RPC 1.3 (lack of diligence) when he failed to file the bankruptcy petition that he drafted. Although the

DEC found that respondent had violated RPC 1.4(b) in failing to keep Underwood informed about the status of the petition and to reply to her requests for information, respondent's communication failures more properly fall within the misconduct described in RPC 1.4(a) (failure to communicate with the client). Finally, the DEC correctly found that respondent violated RPC 8.1(b) when he failed to reply to the DEC investigator's requests for billing records or to offer an explanation as to why he could not comply with the requests.

We find, however, that the respondent did not commit gross neglect (RPC 1.1(a)) when he permitted Underwood to retain him on behalf of O'Shea inasmuch as Underwood was authorized to act

~~as O'Shea's attorney-in-fact. Accordingly, we agree with the~~

DEC's finding that respondent did not violate either RPC 1.1(a) or RPC 1.1(b).

In the Vellucci matter, the DEC properly found that respondent violated RPC 1.3 when he delayed preparing the property settlement agreement and forwarding the file to new counsel in the face of repeated requests. We also find that respondent violated RPC 1.4(a)¹ when he failed to reply to the client's repeated requests for information with respect to the status of the agreement. Finally, as with the Underwood/O'Shea

¹ As with the Underwood/O'Shea matter, RPC 1.4(a) is more applicable to the facts of this matter.

matter, respondent violated RPC 8.1(b) when he neither produced his billing records to the DEC nor offered an explanation for his failure to do so.

Generally, lack of diligence and failure to communicate with the client warrant an admonition. In re Wood, supra, 165 N.J. 584. Accord In re Mullen, 158 N.J. 20 (1999), and In the Matter of Theodore Kozlowski, DRB 96-460 (February 18, 1998) (admonitions imposed in both cases for lack of diligence and failure to communicate with the client). In addition, failure to cooperate with disciplinary authorities ordinarily results in an admonition. In the Matter of Spencer B. Robbins, DRB 04-339 (2004 November 19, 2004) (admonition for attorney who did not

~~promptly reply to the committee investigator's requests for~~
information about the grievance, did not timely return a signed agreement in lieu of discipline, and did not timely file a verified answer to the formal ethics complaint); In the Matter of Kevin B. Shannon, DRB 04-512 (June 22, 2004) (admonition for attorney who did not promptly reply to the committee investigator's requests for information about a grievance); In the Matter of Erik Shanni, DRB 98-488 (April 21, 1999) (admonition imposed for failure to reply, in writing, to committee investigator's requests for information about the grievance). In this case, however, respondent has an ethics

history that includes an admonition, a reprimand (where respondent defaulted), and a censure for lack of diligence and failure to communicate with the client. In the third matter, the Supreme Court censured respondent even though we believed that a reprimand was the appropriate form of discipline. In re Wood, supra, 177 N.J. 514.

The existence of an ethics history leads to the imposition of harsher discipline. This is particularly so when the misconduct demonstrates that the attorney has not learned from prior mistakes. In light of respondent's three previous encounters with the disciplinary system for the same misconduct, he appears unwilling to learn from his prior encounters with the disciplinary system. Therefore, sterner discipline is required, especially in light of the Supreme Court's decision to impose a censure on respondent in the most recent proceeding. Thus, we determine that a three-month suspension is appropriate for respondent's conduct in these two matters.

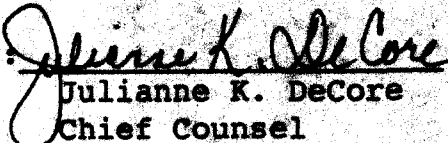
The stipulated mitigating factors do not warrant less than a suspension. While respondent supports four young children and, as such, merits human empathy, family hardship is not a sufficient mitigating factor. In re Davis, 127 N.J. 118, 130 (1992); In re Skevin, 104 N.J. 476, 489 (1986). Moreover, that respondent prepared the bankruptcy petition for O'Shea does not

excuse his failure to file the document. In addition, that respondent ethically represented O'Shea and Vellucci in other matters does not mitigate his failings in these particular matters. Thus, as the parties recommended, and the DEC agreed, a three-month suspension is warranted.

Finally, respondent's counsel informed us at the hearing that she and counsel for the DEC had stipulated that respondent would refund the fee in the Underwood/O'Shea matter and the retainer in the Vellucci matter. Counsel explained, however, that, due to a miscommunication between her and respondent, respondent was never made aware of this requirement, and the money has not yet been returned to the clients. As requested by counsel, we deem the stipulation amended to reflect respondent's obligation to refund \$750 to Underwood and \$1500 to Vellucci within ninety (90) days of the date of this decision.

We further require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

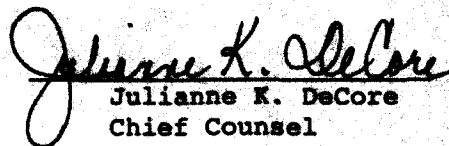
In the Matter of Scott J. Wood
Docket No. DRB 05-054

Argued: April 21, 2005

Decided: June 8, 2005

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan	X				
Holmes	X				
Lolla	X				
Newirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	9				


Julianne K. DeCore
Chief Counsel