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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-339

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IN THE MATTER OF :  
:   
DOROTHY L. WRIGHT, :  
:   
AN ATTORNEY AT LAW :  
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Decision

Argued: November 20, 1997

Decided: May 11, 1998

Donald F. Scholl, Jr. appeared on behalf of the District IIIB Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before the Board based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1976. At all relevant times she maintained a law office as a sole practitioner in the Township of Greenbrook, Somerset County.

On May 22, 1996 respondent received an admonition for failure to communicate and failure to adequately explain to the client the contents of a retainer agreement in a bankruptcy matter.

In a two-count complaint, respondent was charged with violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect); RPC 3.2 (failure to expedite litigation); RPC 1.4(a) and (b) (failure to communicate and failure to explain a matter to permit the client to make informed decisions about the representation); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) arising out of respondent's representation of two matrimonial clients.

#### The Palfi Matter

On or about August 3, 1995 Shirley Palfi, the grievant in this matter, retained respondent to represent her in a divorce action. Palfi gave respondent a \$1,000 retainer for the representation. Between approximately late October 1995 and January 25, 1996, respondent failed to pursue the case, causing a default judgment of divorce to be entered against Palfi.

It is undisputed that respondent handled Palfi's matter properly until late October 1995. In late October 1995 Palfi went to respondent's office to prepare an answer to the complaint and a response to Mr. Palfi's proposed property settlement agreement. Respondent claimed that she had prepared the answer, counterclaim and a counterproposal for the

distribution of the property. Respondent acknowledged, however, that those documents were never filed with the court or sent to Palfi for review.

By way of justification for her inaction in this case, respondent testified as follows: Beginning on October 7, 1997 she was absent from the office for two weeks to attend to various personal matters. During her absence, either her secretary of sixteen years or the secretary's seventy-two year old husband, who was the office clerk, accidentally put Palfi's file in a storage facility with another file. When various letters from Leonard Busch, Mr. Palfi's attorney, were received in the office, the secretary placed them in a file labeled "suspended matters," designed for closed cases in storage. Respondent testified that she was not aware of those letters because her secretary always gave her the incoming mail together with the corresponding file. In this case, however, the letters were not given to her because the file was missing. No one realized that it had been sent to storage. According to respondent, although in October 1995 her secretary periodically searched the office for Palfi's file, she never told respondent that the file was missing. In fact, respondent added, the file was listed in the office as open. Busch's letters allegedly went unread in the "suspended matters" file. Respondent claimed that it was not until she received a letter from Busch dated January 3, 1996, mentioning a January 25, 1996 trial date, that she realized that there were problems in the case. Respondent testified that it was sheer coincidence that she was in the office on a Saturday when that letter was delivered.

According to respondent, after she received the January 3, 1996 letter, she tried to locate the file, to no avail. Respondent contended that, without the file, which contained Palfi's unlisted telephone number, she could not contact Palfi. Respondent did not maintain any other index or listing of telephone numbers for her clients. Palfi, however, received her copy of the letter the following Monday and called respondent. The next day Palfi discharged respondent as counsel. Within two weeks, respondent returned Palfi's \$1,000 retainer.

Thereafter, Palfi secured new counsel at a cost of \$1,900. Both attended the January 25, 1996 trial date. At that time the court vacated the default and awarded Mr. Palfi \$650 in attorney fees for Busch's preparation of the default papers. Respondent later paid the \$900 excess fee charged by Palfi's new attorney, as well as the \$650 fee award.<sup>1</sup>

#### The Zalenski Matter

The grievant, Cynthia Zalenski, retained respondent to represent her in a domestic violence/divorce matter on February 29, 1996. Zalenski paid respondent a \$1,000 retainer at that time.

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<sup>1</sup> An issue was raised at the DEC hearing regarding a letter allegedly prepared by respondent before Palfi's file was misplaced. The DEC noted that the letter was not on letterhead and had a different typeface from other correspondence in the case. The suggestion was that the document was not genuine. However, the record contains no evidence that the letter was not authentic.

Respondent sought and obtained temporary restraints against Zalenski's husband after a violent episode between the parties. A final hearing on the temporary restraints was originally scheduled for March 15, 1996. Respondent and the husband's counsel, Margaret Bond, advised the judge that the parties had agreed to the entry of a consent order clarifying certain contested issues and setting permanent dual civil restraints. The judge then rescheduled the matter for April 3, 1996 to allow the parties an opportunity to execute the consent order.

The matter was heard on April 3, 1996 by another judge. Although Zalenski and her husband appeared, neither respondent nor Bond was present. The judge then left the bench to call respondent at her office, who confirmed that the temporary restraints were to be dissolved and a consent order with civil restraints entered.

At the DEC hearing, Zalenski expressed her dissatisfaction with respondent's services for several reasons. She testified that respondent was to meet her in court on April 3, 1996, but never appeared. In addition, Zalenski complained, she was unhappy about the judge's decision on that day to dissolve the temporary restraints against her husband. Zalenski was also displeased about respondent's failure to investigate Mr. Zalenski's financial situation. According to Zalenski, her husband was spending far more money than he was earning. The couple's joint credit cards had been canceled. The husband had moved out of the marital home with the records for the cards, as well as the records for the couple's joint bank accounts. Zalenski suspected that her husband was recklessly running up credit card debts.

Zalenski complained that respondent had not subpoenaed the bank records for the joint account, as Zalenski had requested on several occasions.

Zalenski charged further that respondent failed to obtain a case information statement ("CIS") from her husband, which would have divulged information about his finances. Zalenski also alleged that she had prepared a CIS of her own, which respondent had never utilized.

Lastly, Zalenski complained that respondent had failed to adequately inform her about the possibility of filing a bankruptcy petition. According to Zalenski, respondent told her only that her credit would suffer if she filed for bankruptcy and offered no further guidance on the issue. Zalenski suspected that respondent was intent on "wrapping up the case."

For her part, respondent testified that a vacation, followed closely by an illness, had been largely responsible for the delays in Zalenski's case. Also, respondent attributed her failure to appear in court on April 3, 1996 to a misunderstanding created during a conversation with Zalenski. Specifically, respondent claimed that, not having received official notice from the court, she had relied on Zalenski's erroneous information about the time of the hearing.

Respondent denied Zalenski's accusations that she had not obtained documents and information regarding Zalenski's husband's financial situation. According to respondent, although she had exercised due diligence in this regard, Zalenski had been unreasonably dissatisfied with the scope of respondent's probe.

As to Zalenski's allegation that respondent had not properly followed through with the party's consent order, respondent blamed that circumstance on Zalenski's subsequent change of heart about certain terms of the parties' prior agreement. Similarly, respondent attributed the failure to file a CIS to Zalenski's failure to return sufficient information to complete the form.

As to the bankruptcy issue, respondent acknowledged having a discussion with Zalenski in this context. Respondent asserted, however, that Zalenski had elected not to pursue that course because of the risk that her \$45,000 equity in a house would be jeopardized.

Lastly, respondent explained that she had not turned over Zalenski's file to new counsel sooner because her receipt of the substitution of an attorney form had been delayed first by the closing of her office for vacation and renovations and then by an illness.

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In Palfi, the DEC found violations of RPC 1.4(a) for respondent's failure to keep Palfi informed about the case, RPC 3.2 for failure to expedite litigation and RPC 1.1(a) for gross neglect. In Zalenski, the DEC found violations of RPC 1.1(a) and (b) for respondent's failure to proceed on the consent order, failure to maintain office coverage during her absence and failure to address the concerns of grievant, and RPC 1.4(a) for failure to communicate the

status of the case to Zalenski. Finally, the DEC found that respondent was guilty of a pattern of neglect, in violation of RPC 1.1(b), for her conduct in both matters.

The DEC recommended the imposition of a reprimand, ICLE courses in office administration and a proctor to supervise respondent's practice of law.

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

In Palfi, respondent's testimony mirrored that of Palfi and of the husband's attorney in many significant aspects. Respondent conceded that, from late October 1995 to early January 1996, she was unaware of the developments in the case. She claimed that she had lost track of the file because of a mistake by staff and that she had been unaware of important correspondence from her adversary because her staff had placed it in the "suspended matters" file. Clearly, had respondent known about her staff's mistake and done nothing to correct the situation, she would have been guilty of gross neglect, lack of diligence and failure to communicate with her client. Here, respondent was unaware of the mishandling of the file until she received a copy of her adversary's letter to the court. This is not to say, however, that respondent should escape responsibility for the foul-up. Obviously, respondent



implemented — or allowed her staff to implement — a correspondence system that did not work. Important letters from her adversary were put aside in a “suspended matters” file and not found by respondent until at least January 3, 1996, some three months after the receipt of the first misplaced letter. One of those letters sought the entry of default against Palfi; another contained an application for equitable distribution. Serious consequences could have befallen the client. Indeed, default was entered against her. Fortunately, it was later vacated. Nevertheless, the mishandling of the file was inexcusable. Respondent’s failure to ensure that her office practices were up to par caused the matter to be overlooked and neglected. While respondent’s conduct in this regard did not rise to the level of gross neglect, it amounted to lack of diligence, in violation of RPC 1.3. Although respondent was not specifically charged with a violation of that RPC, the facts in the complaint gave her sufficient notice of the alleged improper conduct and of the potential violation of RPC 1.3. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.3. Respondent did not object to the admission of such evidence in the record. The complaint is, thus, deemed amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976). For the same reason that the Board dismissed the charge a violation of RPC 1.1(a), the Board dismissed the allegation that respondent failed to expedite litigation, in violation of RPC 3.2.

As to the allegation that respondent violated RPC 8.4(c), the Board found no evidence of conduct involving dishonesty, fraud, deceit or misrepresentation.

for information during that time. Therefore, the Board dismissed the charge of a violation of RPC 1.4(a).

In Zalenski, there was great discrepancy between Zalenski's and respondent's testimony. Although the record at times called into question Zalenski's credibility – a sentiment echoed by the judge in the divorce case – it is undeniable that, in some respects, the fault for the mishandling of the case rested with respondent. For instance, respondent did not fully apprise Zalenski of how the matter should progress and of how she intended to deal with Zalenski's requests and expectations. For this reason, a finding of violation of RPC 1.4(a) and (b) is inevitable.

In the same vein, although there is some attempt to justify respondent's failure to secure the entry of a consent order, respondent should have alerted the court of any problems with the parties' prior agreement. Again, while respondent's misconduct did not reach the level of gross neglect, it did constitute lack of diligence, in violation of RPC 1.3. This finding, too, is in accordance with the principle established in In re Logan, supra, 70 N.J. 222, 232 (1976).

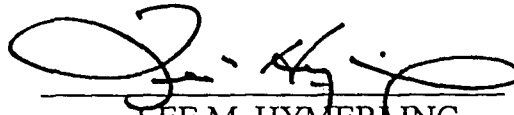
As with Palfi, the record is devoid of any proof that respondent violated RPC 8.4(c) in Zalenski.

In short, respondent violated RPC 1.3 in Palfi and RPC 1.4(a) and (b) in Zalenski. In light of respondent's prior admonition in 1996 for similar misconduct, the Board unanimously determined to impose a reprimand. See, e.g., In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate in two matters with

In short, respondent violated RPC 1.3 in Palfi and RPC 1.4(a) and (b) in Zalenski. In light of respondent's prior admonition in 1996 for similar misconduct, the Board unanimously determined to impose a reprimand. See, e.g., In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate in two matters with gross neglect and failure to return a file in one of the two matters) and In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate in two matters. The attorney had previously received a private reprimand.) One member did not participate.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/11/98

  
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Dorothy L. Wright  
Docket No. DRB 97-339**

**Argued: November 20, 1997**

**Decided: May 11, 1998**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymmerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson							x
Schwartz			x				
Thompson			x				
<b>Total:</b>			9				

*Robyn M. Hill 5/19/98*  
Robyn M. Hill  
Chief Counsel