

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-277
District Docket No. VA-2015-0033E

IN THE MATTER OF
NANCY I. OXFELD
AN ATTORNEY AT LAW

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Decision

Argued: January 19, 2017

Decided: April 24, 2017

Deborah Fineman appeared on behalf of the District VA Ethics Committee.

Respondent waived appearance at oral argument.

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

This matter was before us on a recommendation for a six-month suspension filed by the District VA Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.3 (lack of diligence) and RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter).

For the reasons detailed below, we determine to impose a six-month suspension.

Respondent was admitted to the New Jersey bar in 1977. This matter constitutes the fifth time she will be disciplined for ethics violations. In 1995, she was admonished for failure to comply with a client's requests for information about the status of her matter. In the Matter of Nancy I. Oxfeld, DRB 95-041 (March 22, 1995).

In 2001, respondent received a second admonition, this time for a conflict of interest. Specifically, she was appointed by the New Jersey Education Association (NJEA) to represent Kenneth Thomas Tucker in labor grievances against a board of education. She withdrew from the representation because of a perceived conflict of interest on her part. Later, however, she assisted new counsel, who was also her cousin and law partner, in the hearing, participated in settlement negotiations, and, based on her former attorney/client relationship with Tucker, expressed her opinion about the possibility of a settlement. In the Matter of Nancy I. Oxfeld, DRB 01-144 (July 3, 2001).

In 2005, respondent received a reprimand for lack of diligence in two client matters and failure to comply with one of the clients' several inquiries about the status of the matter. In re Oxfeld, 184 N.J. 431 (2005).

In 2009, respondent received a censure for gross neglect, lack of diligence, and failure to comply with a client's requests for information about the status of her matter. In re Oxfeld, 200 N.J. 268 (2009). Specifically, in June 2002, she was appointed by the NJEA to represent Beril Rance in connection with a racial discrimination claim against the Union City Board of Education. After July 2002, she did not communicate with Rance or reply to her requests for information about her case, and, ultimately, failed to file a complaint on Rance's behalf, allowing the statute of limitations to expire. In the Matter of Nancy I. Oxfeld, DRB 09-152 (August 6, 2009). That matter was before us on a certified record.

This matter was originally before us on a motion for discipline by consent. Specifically, on April 29, 2015, respondent and the DEC entered into a stipulation of discipline by consent (reprimand or such lesser discipline as we may deem appropriate) in respect of the misconduct underlying this matter. On September 21, 2015, following a review of the record, we determined to deny that motion and remand the matter to the DEC for further proceedings. In summary, we determined that, due to respondent's disciplinary history, progressive discipline required a sanction harsher than a reprimand.

On November 2, 2015, the DEC filed a formal ethics complaint, setting forth the same recitation of facts that had been contained in the stipulation and again charging respondent with violations of RPC 1.3 and RPC 1.4(b). In an answer dated November 25, 2015, respondent admitted both the facts and the charged ethics violations set forth in the complaint. She requested a hearing before a panel, limited to "the issue of sanction."

The facts are as follows. In August 2010, Wayne Cozart retained respondent to represent him in a wrongful termination action against his former employer, the County of Passaic. On August 13, 2010, respondent filed a lawsuit on behalf of Cozart in the Superior Court of New Jersey, Passaic County. Respondent also assumed responsibility for a companion action against the County of Passaic, which Cozart previously had filed with the Office of Administrative Law ("OAL").

In response, the County of Passaic filed motions for summary judgment in both actions. Respondent did not oppose either motion, resulting in the dismissal of both of Cozart's claims. Cozart was unaware of the dismissals until he received a notice, directly from the OAL, informing him that his matter had been dismissed. He then called respondent three times to discuss his matters, but she never returned his calls. Subsequent to the

dismissal of the actions, Cozart never received any communication, verbal or written, from respondent. Respondent made no effort to reinstate Cozart's actions.

Based on respondent's admissions to both the facts and charged misconduct set forth in the formal ethics complaint, the DEC determined that she lacked diligence, in violation of RPC 1.3, and failed to keep a client reasonably informed about the status of a matter, in violation of RPC 1.4(b).

Despite her request for a hearing, respondent neither offered any evidence, testimonial or documentary, at the hearing nor asserted a position in respect of the appropriate quantum of discipline to be imposed for her misconduct.

The DEC found that there were no mitigating factors to consider. To the contrary, the DEC noted that respondent had offered "no explanation for her actions and declined to testify." Moreover, the DEC found:

Respondent did not take any steps to vacate the summary judgment orders. There is no evidence that Respondent gave her client his retainer back, or that she has made improvements and changed the manner of her practice to be more efficient and responsive. It appears that Respondent simply did not represent her client's interests, and she appears to the Panel to be unremorseful.

In addition, Respondent has been disciplined four times before. After having received two admonitions, she was then found

to have violated the same two Rules of Professional Conduct that are at issue here. Notwithstanding that she first received a reprimand and then a censure for such violations, the conduct persisted It does not appear that progressive discipline has had its intended effect. Under the circumstances, we conclude that suspension is the appropriate sanction. Anything less is inappropriate, given her lack of remorse and ongoing violations.

[Hearing Panel Report SV1112-13].

As noted above, the DEC recommended that respondent receive a six-month suspension.

The formal ethics complaint, which respondent admitted in its entirety, contains sufficient facts for us to find that respondent lacked diligence in her representation of Cozart, leading to the dismissal of both of his claims, in violation of RPC 1.3, and failed to keep Cozart reasonably informed about the status of his matters, in violation of RPC 1.4(b).

Although not alleged in the complaint, respondent's conduct also constituted gross neglect, in violation of RPC 1.1(a). She failed to oppose both summary judgment motions and, thus, allowed both of Cozart's matters to be dismissed. Additionally, her failure to inform Cozart that his complaints had been dismissed constituted a misrepresentation by silence, in violation of RPC 8.4(c). However, because the complaint did not

charge respondent with violations of either RPC 1.1(a) or RPC 8.4(c), we may not find these Rule violations. See R. 1:20-4(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the harm to the clients, the attorney's disciplinary history, and the presence of aggravating or mitigating factors. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition; attorney who was not licensed to practice law in Washington, D.C. filed an employment discrimination case in the United States District Court for the District of Columbia and obtained local counsel to assist him in handling the matter; after the defendant filed a motion to dismiss the complaint, however, the attorney failed to provide local counsel with written opposition to the motion until after the deadline for doing so had expired, resulting in the granting of the motion as unopposed; violations of RPC 1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various filing deadlines and about the difficulty he was having meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, violations of RPC 1.4(b) and (c); we considered the attorney's exemplary, unblemished career of twenty-eight years

at the time of the incident); In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition; due to the attorney's failure to comply with discovery, his client's civil rights complaint was dismissed; the attorney's motion to vacate the default was denied and a subsequent appeal was dismissed for his failure to timely prosecute it; the attorney neither informed the client of the dismissal of the appeal nor discussed with him his decision not to pursue it; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c); although the attorney had been admonished previously, we noted that his conduct in the present matter predated the conduct in the prior matter, and that the client and his family had continued to use the attorney's legal services, despite his shortcomings in the civil rights matter); In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand); and In re Kurts, 206 N.J. 558 (2011) (attorney reprimanded for mishandling two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other, he was retained to obtain a reduction in child support payments but, at some point, ceased working on the case and

closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to memorialize the basis or rate of his fee; mental illness considered in mitigation; no prior discipline).

Here, the concept of progressive discipline requires imposition of a sanction harsher than a reprimand. In her 2009 disciplinary matter, we enhanced respondent's discipline to a censure due to her failure to learn from her past mistakes and the default status of the matter.

To determine the appropriate measure of discipline, a review of the timeline of respondent's disciplinary record for similar misconduct - that is, lack of diligence and failure to communicate - is appropriate. In 1995, respondent was admonished for failure to comply with a client's requests for information about the status of her matter. That misconduct occurred in 1993. In 2005, she was reprimanded for her lack of diligence in representing two clients and failure to comply with one of the clients' several inquiries about the status of the matter. That misconduct occurred in 2003. Finally, in 2009, she was censured for gross neglect, lack of diligence, and failure to communicate with a client. That misconduct occurred in 2002, predating the

2003 transgressions. Thus, we did not consider the conduct encompassed by the reprimand as an aggravating factor in imposing the censure.

We cannot ignore the continuing nature of respondent's misconduct. Respondent is once again before us, admitting her guilt in a third instance of lack of diligence and a fourth instance of failure to communicate with a client. Although the conduct at issue in the censure matter predated the behavior at issue in the reprimand matter, the censure was imposed by the Court in 2009. In the instant matter, Cozart did not retain respondent until August 2010. Respondent, thus, was on clear notice, as of the imposition of the censure, that any future discipline would be enhanced if she continued to fail to learn from her past mistakes.

The Supreme Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, as addressed in respondent's 2009 matter, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Given respondent's prior censure for the same type of misconduct, a term of suspension is now warranted. There is no mitigation to consider. In aggravation, respondent has offered


no explanation of her wrongdoing. We also assign significant weight to respondent's lack of remorse for her actions. Given respondent's disciplinary history, and considering the aggravation present, we determine to impose a six-month term of suspension.

Members Clark and Singer voted for a three-month suspension.

Member Rivera recused herself.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Nancy I. Oxfeld
Docket No. DRB 16-277

Argued: January 19, 2017

Decided: April 24, 2017

Disposition: Six-month suspension

<i>Members</i>	Six-month Suspension	Three-month Suspension	Recused
Frost	X		
Baugh	X		
Boyer	X		
Clark		X	
Gallipoli	X		
Hoberman	X		
Rivera			X
Singer		X	
Zmirich	X		
Total:	6	2	1


Ellen A. Brodsky
Chief Counsel