

Matter of Hull
Del. Supr. No. 443, 2000 (2/27/01)
Board Case Nos. 4, 5, 17, and 25, 1999.

Disciplinary Rules: **DLRPC 1.1, 1.2(a), 1.3, 1.4(a), 1.5(a), 1.16(a), 2.2(c),
3.3(a)(1), 3.4(b), 8.1(a), 8.4(c)**

Sanctions Imposed: Two-year suspension

On February 27, 2001, the Delaware Supreme Court ordered that Edith H. Hull, Esquire, a solo practitioner in Georgetown, Delaware, be suspended from the practice of law in the State of Delaware, effective March 12, 2001, for a period of two years. The Court approved the findings of the Board on Professional Responsibility (“Board”) that Hull had committed multiple violations of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”) in four disciplinary matters. The allegations and charges in the consolidated Petition for Discipline filed by the Office of Disciplinary Counsel (“ODC”) were deemed admitted pursuant to Rule 9(d) of the Delaware Lawyers’ Rules of Disciplinary Procedure (“Procedural Rules”), based upon Hull’s failure to file a timely answer to the Petition.

Board Case No. 4, 1999. James and Laura Aronson retained Hull to file a Chapter 13 bankruptcy petition. The Aronsons later separated and failed to comply with the payment schedule agreed upon in the Chapter 13 plan. The Chapter 13 trustee filed a motion to dismiss the case. Because of their separation, the Aronsons became adverse parties. Hull failed to disclose the conflict of interest, and she continued to represent both of the Aronsons. Mr. Aronson made several attempts to contact Hull. Although Hull contended that she made attempts to contact him, telephone records indicated that she did not return his calls. Hull advised Ms. Aronson that she could obtain an extension, providing Hull with more time to contact Mr. Aronson and then file a motion to sever and convert to a Chapter 7 bankruptcy. Hull obtained the extension but failed to file the motion to convert the bankruptcy before the deadline. Therefore, the Court dismissed the Chapter 13 case. Several days after the dismissal, Hull filed the motion to convert and the motion to sever and transfer. In the motion to sever and transfer, Hull claimed that Mr. Aronson did not reply to her requests for information about who would represent him once the petition was severed.

Hull violated (1) Rule 1.4(a), by failing to keep Mr. Aronson reasonably informed about the status or the matter or to promptly comply with his reasonable requests for

information; (2) Rule 1.7(a), by filing a motion to sever and transfer on behalf of Ms. Aronson without the consent of Mr. Aronson, who she jointly represented; (3) Rule 1.16(a), by failing to withdraw from the representation of the parties after a conflict arose; (4) Rule 2.2(c), by failing to withdraw as an intermediary for the Aronsons; (5) Rule 3.3(a)(1), by knowingly making a false statement of material fact to the Bankruptcy Court; (6) Rule 3.4(b), by falsifying evidence that she provided to the ODC in connection with its investigation of the Aronson complaint; (7) Rule 8.1(a), by knowingly providing false information to the ODC in response to the Aronson complaint; and (8) Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in connection with her making a false representation of material fact to the Bankruptcy Court and by making false representations and producing falsified documents to the ODC.

Board Case No. 5, 1999. Lillian Rachel Smith consulted with Hull concerning a possible medical malpractice claim. After reviewing Smith's medical records, Hull advised Smith that she probably had a malpractice claim. Hull then stated that she would refer the case to a colleague in Wilmington. Hull failed to refer the case, took no action concerning the medical malpractice claim, and failed to respond to Smith's requests for information about the matter. Nearly two years after initially discussing the claim with Hull, Smith went to Hull's office, retrieved her medical records, and sought representation by another attorney, only to learn that she could not file because the statute of limitations now barred the malpractice claim.

Hull violated (1) Rule 1.2(a), by failing to abide by Smith's objectives for her representation or to consult with her about the means by which they would be pursued; (2) Rule 1.3, by failing to act with reasonable diligence and promptness while representing Smith; and (3) Rule 1.4(a), by failing to keep Smith reasonably informed about the status of her legal matter or to comply promptly with her reasonable requests for information.

Board Case No. 17, 1999. Hull filed a Chapter 7 bankruptcy petition on behalf of John and Candy Knapp. The Knapps were eligible for an exemption related to the equity in their home. Hull did not timely file for this exemption, even after several parties, including the Knapps and the Chapter 7 trustee, expressed concern over the omission. Without consideration of the exemption, the bankruptcy trustee permitted the sale of the Knapps' home. Seven months after the sale, Hull requested that the Knapps sign amended schedules reflecting the exemption, but did not file the amendment until four days after the Bankruptcy Court approved the final disposition of the Knapps' property.

Hull violated (1) Rule 1.1, by failing to provide the Knapps with competent representation; (2) Rule 1.2(a), by failing to abide by the Knapps' decisions concerning the objectives of their representation or to consult with the Knapps about the means by

which they would be pursued; (3) Rule 1.3, by failing to act with reasonable diligence and promptness in representing the Knapps; (4) Rule 1.4(a), by failing to keep the Knapps reasonably informed about the status of their legal matter or to comply promptly with their reasonable requests for information; and (5) Rule 1.5(a), by charging the Knapps an unreasonable fee for her representation in their bankruptcy matters.

Board Case No. 25, 1999. Hull filed a Chapter 13 bankruptcy petition on behalf of Raymond Nack, but did not file a payment plan in a timely fashion. After the Chapter 13 trustee filed a motion to dismiss, Hull received notice that a response must be filed on or before June 12, 1998. Hull, however, failed to act. On June 16, 1998, the Bankruptcy Court ordered dismissal of the case. On June 22, 1998, Hull learned that a motion to reopen the case had to be filed before June 26, 1998, but she did not move to reopen the case, nor did she file a motion for relief from judgment or order. Nack made several attempts to contact Hull, but she did not respond. Nack's secured creditors foreclosed on his home. Nearly two weeks after the sale of Nack's home, Hull filed a motion for relief from judgment or order. After converting the case to a Chapter 7 bankruptcy, the Chapter 7 trustee served a motion to examine Hull's fees. The Bankruptcy Court ordered Hull to refund Nack's attorneys' fees.

Hull violated (1) Rule 1.1, by failing to provide Nack with competent representation; (2) Rule 1.2(a), by failing to abide by Nack's decisions concerning the objectives of the representation or consult with Nack about the means by which they would be pursued; (3) Rule 1.3, by failing to act with reasonable diligence and promptness in representing Nack; (4) Rule 1.4(a), by failing to keep Nack reasonably informed about the status of his legal matter or promptly to comply with reasonable requests for information; and (5) Rule 1.5(a), by charging Nack an unreasonable fee for representation in his bankruptcy matters.

Sanctions. In making its sanctions recommendation to the Court, the Board considered (1) the nature of the ethical duties violated by Hull; (2) Hull's mental state; (3) the actual or potential injury caused by Hull's misconduct; and (4) the existence of aggravating and mitigating factors.

Hull violated a number of obligations to her clients, as reflected by the numerous Rules' violations involving misconduct such as failure to communicate with clients, failure to consult her clients about litigation decisions, and failure to provide competent representation. Hull also charged unreasonable fees and failed to disclose her conflict of interest in the Aronson matter. With regard to the injuries caused by Hull's violations, Smith found her medical malpractice claim barred by the statute of limitations; the Knapps were unable to claim an \$8,000 exemption in bankruptcy to which they were entitled; Nack's home was subjected to foreclosure; and the Knapps and Nack were charged unreasonable fees.

As aggravating factors, the Board considered (1) Hull's substantial experience in the practice of law; (2) Hull's prior disciplinary history; (3) Hull's pattern of misconduct; and (4) the presence of multiple offenses. Hull's prior discipline consisted of a public reprimand in 1997 for failing properly to supervise her legal assistant and for impermissibly paying a commission to that assistant; and a private admonition and two-year private probation in 1997, which arose from three separate matters involving lack of competence associated with filing a Chapter 7 bankruptcy petition, lack of competence for the filing of a contempt motion, and submission of a document containing false information to the Industrial Accident Board.

In mitigation, the Board considered (1) Hull's testimony as to her remorse; (2) lack of a dishonest or selfish motive; (3) personal and emotional problems experienced by Hull. At the hearing, Hull also presented psychiatric testimony that she suffered from bipolar disorder and from obsessive-compulsive disorder. The Board determined that Hull's mental disability was not a mitigating factor under Standard 9.32(i) of the ABA Standards for Imposing Lawyer Sanctions, because Hull had failed to satisfy the requirements to demonstrate her recovery by a meaningful and sustained period of successful rehabilitation and to show that her recovery arrested the misconduct and recurrence of the misconduct was unlikely.

The Board recommended a one-year suspension for Hull, with the option of seeking a termination of the suspension after six months if her treatment were to be effective.

The ODC filed objections to the Board's recommendation, and requested that Hull be suspended for two years. In its decision, the Court observed that "the paramount issue in any attorney discipline matter is the danger to the public that is ascertainable from an attorney's record of professional misconduct." The Court noted that while it was not unsympathetic to Hull's situation, given her prior disciplinary record and the number of her current violations, a one-year suspension was inadequate. The Court concluded that a two-year suspension was the appropriate sanction in order to protect the public. "Following the full two-year suspension," the Court stated, "Hull may apply to the Board for reinstatement. At that time, the burden will be on Hull to demonstrate proof of rehabilitation sufficient to overcome her present limitations to practice."