**ENTRY ORDER**



SUPREME COURT DOCKET NO. 2011-374

NOVEMBER TERM, 2011

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| In re Xavier Rockwell, Esq. | } | Original Jurisdiction: |
| | } | |
| | } | Professional Responsibility Board |
| | } | |
| | } | PRB NO. 2012-097 |

In the above-entitled cause, the Clerk will enter:

On October 19, 2011, disciplinary counsel for the Professional Responsibility Board filed a petition for the immediate interim suspension of respondent, an attorney licensed to practice in the State of Vermont. The basis of the petition is set forth below. Respondent was afforded an opportunity to file a response to the petition and rebuttal evidence, but failed to do so. The Court held a hearing on the matter on November 1, 2011. Disciplinary counsel appeared on behalf of the PRB. Respondent appeared by telephone on her own behalf. On the date of the hearing, the Court received a copy of a letter and exhibits addressed to disciplinary counsel from respondent indicating that respondent had been out of state since October 20, 2011, and had not been able to adequately prepare.

Subsequent to the hearing, the Court issued an entry order, dated November 1, 2011, affording respondent an additional ten days to file a written response to the petition and directing respondent to file adequate proof of malpractice insurance to avoid immediate suspension. On November 2, 2011, respondent filed a letter with the Court indicating that she was not covered by insurance and requesting that she be "allowed to go on a voluntary suspension, of whatever length the court believes appropriate, effective immediately." On November 4, 2011, the Court issued an entry order suspending respondent from the practice of law for failure to comply with the order requiring proof of insurance coverage, pending a final decision on the petition.

Respondent failed to file a formal written response to the petition within the time permitted, although the Court has received two emails from respondent and a copy of a letter, dated November 8, 2011, from respondent to disciplinary counsel. In addition, respondent submitted a filing on November 16, 2011 that included a response to the petition, which the Court has considered. These filings make it clear that respondent continues to oppose the petition and does not consent to a voluntary interim suspension, as her letter of November 2, 2011 had initially suggested.

Having considered the evidence and arguments of the parties, the Court finds and concludes as follows: In August 2011, respondent filed a verified complaint in the Windham Unit of the superior court, civil division, allegedly on behalf of a named plaintiff and the plaintiff's two children. The complaint alleged that defendants Brattleboro Memorial Hospital, Windham Radiology Associates, and a named physician had committed medical malpractice by failing to correctly diagnose the plaintiff's breast cancer "in or about 2006 or 2007." Attached to the complaint was an "Attorney Verification" stating that it was signed by respondent "and not by my client(s)" under the authority of Rule 1.14 of the Rules of Professional Conduct and that the plaintiff was "currently incapable of bringing this lawsuit in her weakened condition and against negative influence." An additional "Certification" attached to the complaint and signed by respondent stated that respondent had performed legal work for the plaintiff in the past and had discussed the malpractice case with her, that the plaintiff had indicated she was interested in

pursuing the claim, and that she was under "pressure" from the "local medical community" not to sue. Respondent also stated that she had asked two medical malpractice attorneys to encourage the plaintiff to file suit without success, and that the plaintiff's "financial situation would be seriously damaged" if she did not file the instant complaint on her behalf. Respondent acknowledged that the plaintiff had "not specifically approved the filing of this Complaint."

In late September 2011, attorney Bret P. Powell filed an appearance on behalf of the plaintiff and an emergency motion to voluntarily dismiss and expunge the complaint filed by respondent. The motion alleged that respondent had not been retained by the plaintiff and was not authorized to file the complaint. The motion was supported by an affidavit signed by the plaintiff confirming that she had not retained respondent or authorized her to file the complaint, that she was "not under any disability," and that respondent had nevertheless refused her request to dismiss the action. The trial court, in response, issued an order, dated October 5, 2011, finding that respondent had not been retained or authorized by the plaintiff to file the complaint. The court granted the motion to dismiss and ordered that all court documents filed with the court be returned to attorney Powell.

Respondent filed a belated opposition to the motion to dismiss on October 12, 2011, and a subsequent motion for reconsideration, dated October 27, 2011. In these filings respondent stated that she had written to attorney Powell in July 2011, before filing the lawsuit, asking him to encourage the plaintiff to file a malpractice complaint, that attorney Powell's motion to dismiss was against the plaintiff's interests, that the plaintiff's "purported affidavit" was "suspect for many reasons," and that the "pressure" on the plaintiff not to file suit had "intensified" due, in part, to the "overzealousness of [attorney] Bret Powell to destroy her lawsuit." Respondent argued that the court "should have been extremely suspect of Bret Powell's motives," that his allegations in the motion were "untrue and despicable," and that it was attorney Powell "that acted unethically, rather than" respondent.

The trial court, in response, denied the motion for reconsideration and referred the matter to the PRB in view of the "extraordinary circumstances" surrounding respondent's actions. As noted, disciplinary counsel then filed the instant petition for immediate interim suspension, alleging that respondent's actions in filing a complaint on behalf of the plaintiff without her knowledge or authorization violated the Rules of Professional Conduct and posed a threat of serious harm to the public.

We are persuaded, in light of the foregoing, that respondent's actions represent conduct prejudicial to the administration of justice under Rule 8.4(d) and a substantial threat of serious harm to the public under Administrative Order 9, Rule 18. Regardless of her belief that the lawsuit she filed on behalf of the plaintiff was authorized by the provisions of Rule 1.14, it is clear that respondent seriously misapprehends that provision, and equally clear that her perception of the events in the wake of that suit are significantly clouded. The Rule provides that an attorney may take legal action in the absence of an attorney-client relationship in an "emergency where . . . the interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm," provided that the person or a representative has consulted with the attorney and the attorney "reasonably believes that the person has no other lawyer, agent, or other representative available." Rules of Professional Conduct, Rule 1.14(d). In addition, the attorney is authorized to take legal action "only to the extent reasonably necessary" and must "take steps to regularize the relationship or implement other protective solutions as soon as possible." Id.

It is clear from her own filings and the record before the Court that respondent knew that the plaintiff was reluctant to file a malpractice action. Nevertheless, she filed one without the

plaintiff's knowledge or authorization. Regardless of respondent's belief that this reluctance was the result of "pressure" not to sue, this does not begin to approximate the "seriously diminished capacity" required by the Rule. It is equally clear that the plaintiff was not without adequate representation, as evidenced by respondent's own letter to attorney Powell in July 2011, one month before the suit was filed, stating respondent's view that "your client [the plaintiff] has what is probably a significant medical malpractice claim" and requesting that attorney Powell "kindly assist your client in making the best decision about this matter" and "help her with whatever is keeping her from bringing her legal claim."

Respondent's filings in response to the motion to dismiss and the petition for interim suspension raise even more serious concerns about her fitness to practice. The motion to dismiss and affidavit filed by the plaintiff removed any possible necessity for the unauthorized suit, yet respondent's response was to oppose the motion, questioning the authenticity of the plaintiff's affidavit without any reasonably evident basis for doing so, and impugning the motives and ethics of attorney Powell. In her oral argument, emails to this Court, and letters to disciplinary counsel respondent persists in these and other unsupported and apparently irrational assertions, questioning the validity of the plaintiff's affidavit, criticizing attorney Powell's "over-zealousness . . . to totally obliterate her lawsuit," suggesting without any support that Vermont courts had afforded respondent no respect because she was "associated with black lawyers" through her attendance at Howard University School of Law, and implying without support that it was necessary to file the lawsuit because of anti-Semitism among the bar directed against the plaintiff.

The tenor and substance of respondent's filings in this matter reveal no genuine understanding of the serious harm caused by her actions and provide no reassurance to this Court that she is currently fit to act as a responsible advocate. We are persuaded, therefore, that an immediate interim suspension of respondent's license is necessary to protect the interests of the public pending completion of the disciplinary proceedings in this matter.

It is therefore ordered that respondent be placed on immediate interim suspension, and that she comply with all of the requirements set forth in Rule 23 of Administrative Order 9.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice