SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-117
District Docket No. XIV-2010-0165E

IN THE MATTER OF	
AURELIA M. DURANT	
AN ATTORNEY AT LAW	

Decision

Argued: September 20, 2012

Decided: October 12, 2012

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Bernard K. Freamon appeared on behalf of respondent.

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

This matter came before us on a stipulation, dated April 11, 2012, signed by the Office of Attorney Ethics ("OAE"), respondent, and respondent's counsel. In the stipulation, respondent admitted that she violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.4(b) (failure to communicate with a client), RPC 1.4(c) (failure to explain a

matter so as to permit a client to make informed decisions regarding the representation), and RPC 1.16(d) (failure to protect a client's interests upon termination of representation).[1]

The OAE recommended discipline ranging from a censure to a six-month suspension. At oral argument, respondent urged us to impose either an admonition or a reprimand. For the reasons expressed below, we determine that an admonition is the appropriate sanction.

Respondent was admitted to the New Jersey bar in 1999. She has no disciplinary history.

The facts have been drawn from the disciplinary stipulation and its exhibits. Until early 2009, respondent was affiliated with Mattleman, Weinroth and Miller, a Cherry Hill law firm that was a provider of services under a pre-paid legal services plan. Although the stipulation does not specify the nature of the

[1] On July 21, 2011, the OAE filed a formal ethics complaint against respondent, alleging violations of the RPCs listed above, as well as RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The stipulation provides that the OAE agreed to "delete" the RPC 8.4(c) charge because it could not prove that violation by clear and convincing evidence.

affiliation, Mattleman, Weinroth and Miller referred bankruptcy clients to respondent.

In July 2009, respondent entered into an agreement with Stuart Gavzy, an attorney in Little Falls, whereby respondent would join Gavzy's firm and Gavzy would gradually assume the responsibility of all of respondent's bankruptcy cases from the pre-paid legal services plan. Pursuant to this agreement, respondent was to receive thirty percent of the legal fees generated by her cases and Gavzy would receive seventy percent. Respondent gave Gavzy a list of the names and contact information for the bankruptcy clients.

On August 31, 2009, Gavzy and respondent sent letters to all of respondent's bankruptcy clients on letterhead listing respondent as "of counsel." The letterhead contained both Gavzy's Little Falls address and respondent's Cherry Hill address. The letter informed the clients that respondent had become "of counsel" to Gavzy's law firm, that the law firm would maintain its office in Cherry Hill but provide services through the Little Falls office, and that the bankruptcy matters would be handled by both Gavzy and respondent. In addition, the letter acknowledged receipt of any fee that the client had paid to

respondent and requested that the client contact the law firm to confirm the information and to arrange the payment of any balance due.

In September 2009, respondent relocated to Arizona. As of the date of the stipulation, April 2012, she resided in Georgia.

When the clients called Gavzy's office for updates on their matters, Gavzy's office staff told them that respondent had left the state and was no longer working there. With Gavzy's consent, all calls to respondent's office were rerouted to his office. During the summer and fall of 2009, respondent remained in contact, via e-mail and telephone, with a paralegal in Gavzy's office.

In the stipulation, respondent admits that she failed to (1) notify her clients that she would be moving out of state and would not thereafter be directly involved in their bankruptcy matters; (2) explain to her clients that, because of personal problems and her decision to move out of state, another lawyer would be handling their bankruptcy matters; and (3) "follow up on the status of the bankruptcy matters that had been taken over by the Law Offices of Stuart D. Gavzy, Esq."

The stipulation contains detailed information concerning twenty-seven bankruptcy matters, including the name of the client, the amount of the fee paid to respondent, the services that respondent provided, and the date, if any, that Gavzy filed a bankruptcy petition for that client. Of those twenty-seven cases, Gavzy filed a bankruptcy petition in all but four cases: in two of them (Shannon Corbitt – the grievant – and Renee Benefield), another attorney filed the petition and, in two other cases (Kele Martin and David and Charissa Fischkelta), the stipulation is silent as to whether a petition was filed. However, the stipulation recites that, in both the Martin and Fischkelta matters, respondent opened a file, interviewed the clients, received credit reports and other documents concerning their financial circumstances, and provided the clients' contact information to Gavzy. In the Fischkelta case, respondent also provided documents to Gavzy by e-mail and flash drive, in September and November 2009, respectively.

The stipulation cites, as mitigating factors, respondent's contrition and remorse, her cooperation with the OAE, her ready admission of wrongdoing, and the absence of a disciplinary history. It also notes that her actions occurred in one time

period, from July 2009 to spring 2010. In aggravation, the stipulation points out that thirty-four clients were affected by respondent's misconduct.[2]

Following a review of the record, we are satisfied that the stipulation provides an ample basis to support only the RPC 1.4(b) and (c) violations.

The stipulation provides that, on August 31, 2009, both respondent and Gavzy signed letters sent to respondent's bankruptcy clients, informing them that both Gavzy and respondent would be providing legal services to them. The letter indicated that, although the law firm would be maintaining its Cherry Hill office (the location of respondent's office), the services would be provided through the Little Falls office (the location of Gavzy's office). Respondent's clients, thus, were informed that Gavzy, as well as respondent, would be handling their cases. Indeed, Gavzy filed bankruptcy petitions in twenty-three of the twenty-seven cases listed in the stipulation.

As the clients were informed in the August 31, 2009 letter, Gavzy provided the necessary services for the vast majority of

[2] Presumably, this number encompasses all of the clients involved in the twenty-seven bankruptcy matters, including spouses.

respondent's clients. In two of the cases, the clients chose to retain other counsel, who filed bankruptcy petitions on their behalf. As to the other two cases, Martin and Fischkelta, after respondent performed preliminary services, she provided Gavzy with both the client contact information and, in Fischkelta, documents that she had obtained. Although the stipulation does not disclose whether bankruptcy petitions were filed on behalf of Martin or the Fischkeltas, there is no indication that their cases were neglected.

It is clear that respondent arranged for her cases to be transferred to Gavzy, who provided appropriate legal services to respondent's clients. We, thus, find that the stipulation does not contain clear and convincing evidence that respondent engaged in gross neglect or a pattern of neglect. Accordingly, we dismiss the charges that respondent violated RPC 1.1(a) and (b).

Similarly, the stipulation does not contain clear and convincing evidence that respondent failed to protect her clients' interests, upon termination of the representation. Respondent took the necessary action to provide Gavzy with both contact information and documents concerning the bankruptcy clients. She maintained contact with Gavzy's paralegal. With

Gavzy's consent, she arranged for the forwarding of her telephone calls to Gavzy's office. We, thus, dismiss the RPC 1.16(d) stipulated violation.

Respondent, however, failed to inform her clients that, because of her out-of-state relocation, she would not be directly involved in handling their bankruptcy matters. In this regard, she violated RPC 1.4(b). She also failed to explain to her clients that, because of personal problems and her move out of state, another lawyer would be providing legal services to them. If her clients had been told of respondent's relocation plans, they might have chosen to be represented by other counsel. Respondent, thus, violated RPC 1.4(c) by failing to explain a matter so as to permit a client to make informed decisions about the representation.

The stipulation raises the possibility that respondent knew, when she and Gavzy sent the August 31, 2009 letter to her clients, that she would be moving out of state in September and would not be directly providing legal services to them. If so, respondent may have made a misrepresentation to the clients, a violation of RPC 8.4(c). The stipulation, however, states that

the OAE could not prove that violation by clear and convincing evidence. We, thus, make no finding in this regard.

As to the quantum of discipline, typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of Ronald L. Washington, DRB 12-138 (July 27, 2012) (attorney failed to reply to the client's reasonable requests for information about her case and failed to advise her about important aspects of the case, such as the need for an expert, violations of RPC 1.4(b) and (c); the attorney also failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b)); In the Matter of David A. Tykulsker, DRB 12-040 (April 24, 2012) (attorney failed to inform his client that the court had denied a motion to vacate an order dismissing the client's claim; the client did not learn of this development until he called the attorney, twelve days later, to inquire about the outcome; the attorney also failed to comply with the client's multiple requests for a copy of the court's orders until, several months later, when the client appeared at his office to obtain them); In the Matter of Neil George Duffy, III, DRB 09-311 (March 10, 2010) (attorney orally informed client that he would no longer represent him but thereafter

failed to dispel the client's continuing belief that he was represented by the attorney, as evidenced by the client's sporadic telephone calls to the attorney inquiring about the status of his case; violation of RPC 1.4(c)); In the Matter of Shelley A. Weinberg, DRB 09-101 (June 25, 2009) (for a one-year period, attorney failed to advise his client about important aspects of a Social Security disability matter; the attorney erroneously advised the client that his claim had been denied and then failed to explain his error; he also failed to notify the client that he had terminated the representation and had retained the "excess" portion of his fee while exploring avenues of appeal; no disciplinary infractions since his 1988 admission to the bar); and In the Matter of Marc A. Futterweit, DRB 08-356 (March 20, 2009) (attorney failed to keep his client informed about the case and failed to reply to the client's requests for information about the matter; the attorney admitted his wrongdoing and had no disciplinary infractions since his admission to the bar in 1989).

If the attorney has a disciplinary record, a reprimand may result. See, e.g., In re Wolfe, 170 N.J. 71 (2001) (failure to communicate with client; reprimand imposed because of the

attorney's ethics history: an admonition, a reprimand, and a three-month suspension).

In mitigation, we considered the factors listed in the stipulation: respondent's contrition and remorse, her ready admission of wrongdoing, and respondent's thirteen-year unblemished legal career.

Although we also considered, in aggravation, the large number of clients affected by respondent's ethics infractions, we are satisfied that no reason exists to deviate from the line of cases imposing admonitions for violations of RPC 1.4(a) and (b). We, thus, unanimously determine that an admonition is the appropriate level of discipline in this case.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Aurelia M. Durant
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Decided: October 12, 2012

Disposition: Admonition

Members	Disbar	Three-month suspension	Censure	Admonition	Did not participate
Pashman				X	
Frost				X	
Baugh				X	
Clark				X	
Doremus				X	
Gallipoli				X	
Wissinger				X	
Yamner				X	
Zmirich				X	
Total:				9	

Julianne K. DeCore
Chief Counsel