SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-150

IN THE MATTER OF

E. LORRAINE HARRIS

AN ATTORNEY AT LAW

Decision

Argued: June 19, 2003

Decided: August 15, 2003

Mati Jarve appeared on behalf of the District IV Ethics Committee.

Angelo J. Falciani appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1994. On September 28, 1999, she was temporarily suspended for potential misappropriation of escrow funds. In re Harris, 162 N.J. 2 (1999). On October 26, 1999, she was reinstated, with certain restrictions. On January 10, 2000, she was temporarily suspended for failure to comply with a fee arbitration determination. In re Harris, 162 N.J. 189 (2000). She was reinstated on January 19, 2000. On

September 7, 2000, she received a reprimand for failure to provide a client with the basis or rate for her fee, in writing, and failure to utilize a retainer agreement. In re Harris, 165 N.J. 471 (2000). In 2000, she received an admonition in connection with another matter, in which she also failed to provide to the client, in writing, the basis or rate for her fee. In the Matter of E. Lorraine Harris, Docket No. DRB 99-037 (September 27, 2000). On May 8, 2001, effective June 4, 2001, she was suspended for six months for gross neglect, lack of diligence, charging an unreasonable fee, failure to safeguard client property, failure to promptly deliver funds to a third party, recordkeeping violations, false statements of material fact and misrepresentations in letters to a municipal court, and failure to cooperate with disciplinary authorities. On June 4, 2001, the Court temporarily stayed the suspension to allow the full Court to review respondent's motion for reconsideration and remand. On June 5, 2001, the Court vacated the temporary stay and denied respondent's motion. In re Harris, 167 N.J. 284 (2001).

Also on May 8, 2001, respondent was suspended for three months, effective December 4, 2001, for lack of diligence, failure to expedite litigation, knowingly making a false statement of material fact to a tribunal, failure to cooperate with disciplinary authorities, and misrepresentation. Specifically, respondent requested and obtained numerous last-minute adjournments of a client's municipal traffic matter. On one trial date, respondent failed to appear. Later that day, the judge found a "faxed" letter from respondent on the court's fax machine, thanking the court for granting her adjournment request that morning. However, no such request had been made or granted by the judge. In re Harris, 167 N.J. 284 (2001).

Although respondent's last suspension expired on March 4, 2002, she has not applied for reinstatement.

* * *

This is a troublesome case. It appears that respondent tested the patience of the hearing panel by delaying or failing to produce documents prior to the DEC hearing, which spanned six hearing days. Perhaps because the DEC was somewhat influenced by respondent's demeanor, some of its findings were not supported by the evidence. The DEC expanded the scope of the complaint at the hearing, allowing the introduction of evidence that, if true, would implicate respondent in misconduct that could not have been gleaned from the four corners of the complaint. The DEC then pinned respondent with serious violations, based on the flawed process. Throughout the hearing, respondent objected vehemently to the introduction of issues not contemplated in the complaint, but the hearing on these new issues continued over respondent's objections. As seen below, our independent, de novo review of the record yielded fewer violations than those found by the DEC. To be sure, respondent's overall conduct in these matters was extremely serious. Her pattern of unethical conduct was troubling and worthy of serious discipline. Nevertheless, in order to protect the integrity of the disciplinary process, we dismissed findings that either did not satisfy the standard of clear and convincing evidence, or violated due process rights, or were patently unfair under the circumstances of this case.

I. The Brittingham Matter - District Docket No. IV-00-025E

Thomas J. Brittingham retained respondent on or about November 20, 1995, to represent him in a breach-of-contract claim against the City of Salem Community Development Office, arising out of housing rehabilitation work that he had done for the city. Brittingham gave respondent a $5,000 retainer, after she, according to the complaint, "requested the money to pay for filing a Complaint and for a court reporter to take depositions."

On April 5, 1996, respondent filed a complaint in the United States District Court for the District of New Jersey, naming the city and numerous other state and local officials as defendants. The complaint alleged numerous wrongs, including breach of contract, slander, fraud and defamation of character. The formal ethics complaint alleged that respondent failed to prosecute the case; failed to propound interrogatories and to secure records from the city; failed to comply with discovery orders; and failed to keep Brittingham advised of the status of the matter, all in violation of RPC 1.3 (lack of diligence), RPC 1.1(a) (gross neglect) and RPC 1.4(a) (failure to communicate with the client). The complaint also charged a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), although, as seen below, the complaint was anything but clear as to the facts that could support that charge.

On or about January 24, 1997, Brittingham terminated respondent's representation and requested the return of his file.

On February 24, 1997, respondent sent a letter to Brittingham informing him that "out-of pocket" expenses included $3,000 for the deposition transcripts. She demanded payment before the release of those transcripts. With the letter, respondent returned three boxes containing some of Brittingham's file. Respondent testified that she also sent a draft of an itemized bill with the file. The deposition transcripts were not included, however.

Brittingham, who determined to continue in the action pro se, advised the court of respondent's refusal to release the deposition transcripts. The magistrate then ordered respondent to furnish copies of the entire file to Brittingham.

Ultimately, the district court dismissed Brittingham's complaint for lack of federal jurisdiction. On or about July 30, 1997, Brittingham filed a similar action pro se in Camden County Superior Court, this time adding a count alleging that respondent had committed malpractice. That lawsuit was also dismissed as to all defendants, save respondent, who failed to file an answer or appear in the matter. On August 21, 1998, a proof hearing was held. Shortly thereafter, on September 4, 1998, a $5,000 final judgment was entered against respondent.

During the investigation of this disciplinary matter, it was discovered that the court reporter's bill was never paid, despite numerous requests for payment. In fact, the only factual basis for the charge of a violation of RPC 8.4(c) in this matter appears to be related to the deposition transcripts, in that respondent requested a $5,000 retainer for filing the complaint and for "a court reporter to take depositions," but did not pay the court reporter. According to respondent, the retainer was applied toward legal fees and other expenses/costs

of suit. The complaint seemed to imply that respondent's failure to pay the court reporter's bill from the $5,000 retainer violated RPC 8.4(c), because that was one of the purposes that respondent cited to Brittingham when she requested the $5,000.

The complaint also charged that respondent neglected the case. Respondent, however, testified that Brittingham was an extraordinarily difficult client, who stymied her efforts to move the case. She also testified that the magistrate had told her to "get rid of the case in order to save her career." To explain her failure to take depositions of about twenty individuals, respondent stated that there was very little money for that purpose. She claimed that Brittingham either did not want or could not afford to absorb those costs. She also testified that, for the same reason, she did not propound interrogatories in many instances.

Respondent did not refute that, by August 1996, the case had "jumped the tracks," with several defendants filing motions to compel discovery and to impose sanctions against her. On August 27, 1996, the federal court held a telephone conference with all counsel. The court ordered Brittingham to provide certain discovery by August 31, 1996. Respondent failed to do so, even though Brittingham had prepared and had given her an important document, a computation of damages. Therefore, on September 4, 1996, the court ordered respondent to compensate defense counsel for time required to resolve the outstanding discovery issues. In its opinion of even date, the court warned that "plaintiff's counsel is again reminded that her actions lead inexorably to dismissal of the Complaint." Respondent was allowed until September 10, 1996 to comply with the remainder of the outstanding

discovery requests, including the computation of damages, answers to the interrogatories from one of the defendants and Brittingham's deposition.

Days later, respondent filed a motion for the appointment of a special master to assist plaintiff in computing damages (even though Brittingham had already done so). The magistrate denied respondent's motion, noting that there was no basis for such a request, that it was submitted with respondent's affidavit only, but no brief, and that, "if plaintiff cannot reveal his damages, he ought to give serious thought to dismissal of his claims." Respondent drafted and filed her own computation of damages in October 1996, which totaled over $10,000,000. Although respondent claimed that Brittingham was aware of this filing, he stated that he never discussed it with respondent, believing that she had filed his calculations, which totaled $835,000.

On January 24, 1997, Brittingham notified the court that he was terminating respondent's representation. He requested that respondent return his file. On February 24, 1997, respondent replied by letter, alleging that Brittingham had harassed her staff. As noted earlier, she enclosed three boxes of files, but refused to include the deposition transcripts, unless Brittingham paid $3,000 in outstanding costs for the depositions.

On March 26, 1997, the court ordered respondent to return the entire file to Brittingham. Respondent did not timely comply with this order. She testified that the remainder of the file, beyond the three boxes already given to Brittingham, would have cost $1,500 to copy at "Staples" and that she did not have the necessary funds. She claimed that the total Brittingham file exceeded 20,000 pages. According to respondent, she had offered

Brittingham the use of her office to peruse the remainder of her file until such time as copies could be made, but he had refused. Five months later, Brittingham still had not received parts of his file. It is unclear if respondent ever returned the remainder of the file to Brittingham.

With regard to the allegation that respondent failed to communicate with Brittingham, he testified that she never told him that the complaint was in jeopardy of being dismissed. According to Brittingham, he was unaware that respondent had not prepared and served interrogatories or made requests for discovery in the matter. He testified that he was shocked to find that respondent had "wasted" six months, without deposing the defense witnesses. Moreover, he stated, he only learned the extent of respondent's inattention to the case when he began to act pro se in January 1997. He also testified that respondent had not filed his defamation claim until after the statute of limitations had expired and blamed respondent for the loss of that claim.

Respondent, in turn, challenged Brittingham's credibility. She testified that he came to her office every other day, over the course of the representation. According to respondent, she gave Brittingham the run of the office, allowing him to look through his file for hours on end and to use her computer and the remainder of the office as he wished. She insisted that Brittingham was always kept apprised of events in his case, either through her or her staff. Although she admitted a dearth of written communications with Brittingham over the course of the representation, she argued that such dearth evidenced the frequency of her oral communications with him.

* * *

The DEC found that respondent violated the following RPCs:

- RPC 1.1(a) and RPC 1.3 (gross neglect and lack of diligence) for not keeping Brittingham informed of court orders; "forfeiting through her own incompetence [Brittingham's] right to pursue a claim; and ignoring specific requests of [Brittingham]."
- RPC 1.4(a) (failure to communicate with the client) for failure to inform Brittingham of various court orders, specifically, the need for a computation of damages, as ordered by the court; failure to update Brittingham on the status of motions filed in the case; and failure to provide an itemized bill, despite Brittingham's request for one.
- RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for filing the federal complaint without having been admitted to practice in that jurisdiction; "cash[ing] half of the retainer paid to her by the client, as opposed to depositing the entire check in a trust account until the retainer had been earned"; "misrepresent[ing] to her client regarding the payment of fees to the court reporter for deposition transcripts;" and "deceitfully prepar[ing] billing statements of the time spent on her client's cases, including some instances of time billed for dates during which she was not representing the client."

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence. We are unable to agree, however, with several of the DEC's findings, since they exceeded the boundaries of the complaint. Although it is sometimes appropriate to make findings on issues not addressed in the complaint – by amending the complaint to conform to the proofs – in this case the DEC made certain findings that were not supported by clear and convincing proof. More importantly, the DEC made some findings on charges of which respondent had no notice prior to the hearing.

I. The Brittingham Matter

As seen above, the DEC found that respondent displayed lack of diligence and gross neglect by "forfeiting through her own incompetence" Brittingham's claim; by failing to keep Brittingham informed of court orders; and by ignoring his "specific requests." The latter two findings, even if true, would not constitute gross neglect and lack of diligence, but failure to communicate with the client, a violation of RPC 1.4(a). Presumably, the third finding – that respondent "forfeited Brittingham's claim" – related to the defamation claim, which, according to Brittingham, was precluded by the statute of limitations. That issue was not, however, fully addressed at the DEC hearing. Moreover, because the federal complaint was dismissed for lack of jurisdiction, it cannot be found that the claim was lost because of respondent's delay – if any – in filing it. We, therefore, dismissed this finding. On the other hand, we made a finding that the DEC apparently overlooked – that respondent lacked diligence in conducting discovery. Indeed, that the suit was ultimately dismissed for lack of jurisdiction should not condone respondent's overall inaction.

With regard to violations of RPC 1.4(a), the only proper findings by the DEC were that respondent failed to inform Brittingham of the court's orders and of her motions and failed to return his telephone calls. We rejected respondent's argument that Brittingham's frequent visits to the office relieved her of the obligation to advise him, in writing, of important aspects of the case. We, dismissed, however, the finding that respondent failed to submit an itemized bill for her services, as she included a bill, albeit handwritten, when she returned portions of the file to Brittingham, on February 24, 1997.

As to the DEC's findings of RPC 8.4(c) violations, as noted earlier, a reading of the complaint shows only one possible basis for the charge of a violation of that rule – that respondent requested the $5,000 retainer for filing the complaint and deposition transcript costs, but used the funds for her legal work and/or other expenses and costs. Under that scenario, for us to find a misrepresentation, we would have to conclude either that respondent unambiguously assured Brittingham, at the outset, that she would use the $5,000 for the court reporter's bill and for no other purposes, knowing that to be untrue, or that she lied to Brittingham that she had used the funds to pay the court reporter. There was no evidence, however, to support either finding. The retainer agreement, which was signed by Brittingham, stated that "[y]ou agree to pay a minimum of $5,000 for *legal services* regardless of the amount of time actually spent on the case." (Emphasis added). In another paragraph, the agreement provided as follows:

> In addition to legal fees, you must pay the following costs and expenses:
>
> Expert fees, court costs, accountant's fees, appraiser's fees, service fees, investigator fees, deposition costs, messenger services, photocopy charges, telephone toll calls, postage and any other necessary expenses in this matter.

In addition, respondent testified that she had long discussions with Brittingham about the considerable costs that he could expect to incur. In the absence of Brittingham's express request or respondent's promise that the $5,000 be used for deposition costs, there was no evidence that respondent's conduct in utilizing the retainer for other purposes related to the suit constituted dishonesty, deceit or misrepresentation.

Similarly, nothing in the record suggested that respondent lied to Brittingham that she had used the retainer to pay the court reporter's bills.

The DEC found several other instances of misrepresentation or deceit that were either not supported by the record or, if supported, would violate due process because of respondent' s lack of notice of the charges. Those findings were:

A. Filing the complaint without being admitted to the federal bar.

It is undisputed that respondent was not admitted to practice in the New Jersey federal courts when she filed the complaint. She claimed that she was unaware that she had to pay a fee to become a member of the federal bar. Respondent testified that, as soon as she became aware that a fee was required, she paid it, within a month or so of filing the complaint.

Although ignorance of the law is no excuse, under the circumstances of this case, where the district court did not report respondent's conduct to the disciplinary authorities and where respondent was not put on notice of a potential finding of a violation of RPC 5.5 (unauthorized practice of law), we dismissed the DEC's finding in this context.

B. Failure to deposit the retainer into trust account and cashing one-half of it before the fees were earned.

R. 1:21-6(a) and In re Stern, 92 N.J. 611 (1983), allow retainers to be deposited into an attorney's business account, unless the client requires that they be placed in the trust account. Furthermore, once the retainer is placed into the business account, the attorney is

entitled to "cash" the entire amount, subject always to the return of any unearned portion of the retainer, if the attorney is discharged prior to the conclusion of the matter.

C. "Deceitfully preparing false billing statements of the time spent on her client's case, including some instances of time billed for dates during which she was not representing the client."

Nothing in the complaint gave notice to respondent that she was being charged with this serious misconduct. Therefore, she was not afforded an opportunity to defend herself against this charge. Because of the grave nature of this impropriety, due process considerations precluded us from reviewing it. More appropriately, the DEC should have amended the complaint to include these charges and then given respondent an opportunity to prepare a defense to them, prior to the DEC hearing. Indeed, respondent strenuously objected to the DEC's consideration of these charges.

We dismissed, thus, all the DEC's findings of violations of RPC 8.4(c). We were left with respondent's failure to communicate with Brittingham, lack of diligence and gross neglect in handling the case, in violation of RPC 1.4(a), RPC 1.3 and RPC 1.1(a), respectively.

We made one more finding, despite the absence of a charge in the complaint. Respondent did not return parts of the file to Brittingham, despite his requests and the magistrate's order. Her justification was the high cost of the file reproduction. However, under RPC 1.16(d) and N.J. Advisory Committee on Professional Ethics Opinion 554, 115 N.J.L.J. 565 (1985), a discharged attorney is ethically obligated to return essential portions of

the file to the client. The attorney, of course, is entitled to keep a copy of the file to protect himself/herself against possible malpractice suits, or ethics or tax inquiries. It is the client's or the new attorney's responsibility to pay for the reproduction costs. If litigation is pending, there can be an agreement for payment out of the proceeds of the litigation. Here, if Brittingham had refused or did not have the means to pay for the copying costs, but needed essential documents to complete the litigation, respondent should have sought the court's guidance on how to resolve the impasse in a manner that would protect both her and Brittingham's legitimate interests. What she could not do, however, was to refuse to turn over the file, particularly in the face of a court order. We, therefore, found that such conduct violated RPC 1.16(d) and Opinion 554, as well as RPC 8.4(d) (conduct prejudicial to the administration of justice, by respondent's failure to comply with the court order). No considerations of unfairness should come into play here, inasmuch as this issue was fully litigated below, with no objections from respondent.

II. The Lisa Matter - District Docket No. IV-00-053

The complaint in this matter charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(a) (unreasonable fee) and RPC 8.4(c) (deceit or misrepresentation).

On or about February 6, 1995, Joseph Lisa retained respondent to represent him in a matter against his employer, Drexel University, alleging wrongful termination of employment. Respondent and Lisa entered into three separate retainer agreements, dated

February 6, February 20, and June 29, 1995. Under the terms of the third retainer agreement, which provided for a contingent fee, respondent agreed to file a claim with the federal Equal Employment Opportunity Commission ("EEOC"). Respondent was to be paid $150 per hour, except for court appearances, which would be billed at the rate of $175 per hour.

Shortly after Lisa's employment terminated, Drexel sent him his final paycheck. Thereafter, by letter dated March 17, 1995, respondent returned the money to Drexel's attorney ($5,553), pending a resolution of Lisa's claims.

The fee agreement stated as follows, in part:

> Upon the signing of this agreement, you will be required to make an initial retainer payment of $2,500 for preparation of the complaint[,] the EOC charge and preparation of interrogatories. Five hundred dollars of that amount has already been paid, leaving a balance of $2,000. The $2,000 will be deducted from your estimated $5,553 being held by the attorneys for Drexel University. The $5,553 will be held in escrow to be dispensed as expenses accrue. Any interest accrued on advance payments in escrow will be used to defray the bookkeeping cost of maintaining an escrow.
>
> The minimum amounts stated above represent the minimum amount that must be paid and paid into escrow for expenses as they accrue. The agreement in this paragraph does not in any way relieve you of your responsibility for the costs and expenses listed in paragraph 9.

On July 20, 1995, respondent wrote to Drexel's attorney to request that Lisa's paycheck be forwarded to her office. She cautioned that her request should not to be viewed as a settlement of Lisa's claims.

Upon receipt of the money from Drexel, respondent negotiated the check. Lisa testified that he was unaware, until after he filed the grievance against respondent, that she

had written to Drexel to request the $5,553. The record is unclear on whether respondent cashed the check or deposited it in her business account. Counsel for respondent stipulated that the check was not deposited in her trust account and that she did not maintain a ledger card for the transaction. Respondent was not charged with any impropriety on this score.

Respondent filed a claim with EEOC, asserting that the "date of last harm" to Lisa was February 12, 1995. Respondent's possible knowledge of the inaccuracy of this date was the subject of extensive testimony at the DEC hearing. According to respondent, the last-harm date was February 12, 1995. She said that, unfortunately, the original charge that she filed on or about December 8, 1995, inadvertently listed the date as February 6, 1995. Therefore, she explained, she wrote in the February 12, 1995 date with a pen just before she filed the charge. More on that issue is detailed below.

There was very little activity in the matter until about May 1997, when the EEOC requested that Lisa fill out a new set of charge forms. According to a May 8, 1997 letter from respondent to the EEOC – the only correspondence in the record regarding the issue – Lisa completed those forms, which respondent then filed.

Two years later, by letter dated February 22, 1999, the EEOC dismissed Lisa's charge as out of time by several days. The EEOC determined that the last-harm date actually fell between February 1 and February 5, 1995. In order for Lisa's claim to have been considered, it had to be filed on or before December 4, 1995. Respondent filed it four days later. The EEOC suggested that the new date had been inserted in the documents in an effort to defeat the time limitations. The EEOC did not assert a basis for its determination in this regard.

On February 26, 1999, respondent wrote to the EEOC, stating that she had inserted the date "February 12, 1995" to reflect the actual last-harm date – the date that Lisa had received his final paycheck from Drexel. The EEOC did not reverse its determination.

Lisa testified that he was very upset upon receiving the dismissal letter and that he immediately contacted respondent, who told him that she would appeal the EEOC decision. Lisa further testified that respondent was aware "from day one" that he had been discharged from Drexel on February 2, 1995, effective February 5, 1995. He testified that he retained her immediately upon learning of his discharge and that she had ample time to file any necessary documents on his behalf.

According to Lisa, respondent had told him, at the end of the case, that he could file a civil lawsuit in federal court, now that a determination had been made by the EEOC. He understood from her that to do so would be very costly. He stated that, because he had no money to finance another action, he declined to pursue it any further.

Finally, Lisa claimed that he suffered considerable harm from his discharge because he was just short of attaining twenty years of service with Drexel when he was let go and, therefore, his pension time was affected. He added that his daughter had to leave Drexel during her junior year, because he could not afford to send her there without the favorable employee tuition rate.

Respondent, too, testified about the EEOC dismissal, claiming that the EEOC, not she, had erred in handling the matter. She had no plausible explanation for filing the charge at the last possible moment, thus risking its dismissal.

On or about March 10, 1999, respondent sent Lisa a letter reminding him that he had only ninety days to file a civil action and that, if he chose to do so, a $5,000 retainer would be required. Lisa never retained respondent to file the civil action.

With respect to communication in the case, Lisa testified that he knew respondent's secretary, Irene Grelli, before he retained respondent. He kept abreast of his case through Grelli until she left respondent's employ. Lisa stated that, beginning in or about 1997, he experienced difficulty obtaining information or documents from respondent, despite telephone calls and visits to her office. On March 24, 1997, Lisa sent the following letter to respondent, by certified mail:

> The second anniversary of my termination has passed and it seems that Drexel University has taken the attitude that with time we will forget.... I know that the legal system is slow and tedious, but I did not think it would be like this. Please let me know if anything is happening or what we should next [sic].

Respondent did not reply directly to that letter, but met with Lisa on May 8, 1997, to complete a new set of charge forms requested by the EEOC. A year later, in a July 27, 1998, letter to respondent, Lisa stated as follows:

> I recall that you had placed in escrow the check that Drexel had sent me as the final payment owed me, which included unused vacation and the days worked prior to my termination. This was in the amount of $5,574.00.
>
> Since I have heard nothing about this Litigation from you, from the Drexel, or from the Courts, I take that it is over. I am requesting that you sent [sic] me a detailed account of the expenses occurred [sic] so far, so that we can close the escrow account.

Thereafter, Lisa claimed, he sent several more letters to respondent by certified mail. He produced some certified mail receipts dated January 27, 1999, January 28 of an unknown year, and February 2000. He could not locate the corresponding letters claiming that a computer problem rendered them unrecoverable.

Respondent testified that she, in turn, had problems reaching Lisa. She denied that she ever failed to return his telephone calls or reply to his correspondence. She stated that, toward the end of the representation, she spoke with Lisa in depth about the case and that, after advising him of his options, including the costs associated with a civil suit, he decided not to file suit. Respondent had no ready explanation for the long periods of time that elapsed without written communications to Lisa, other than to say that years of EEOC inaction were not uncommon in these cases. She claimed that the EEOC was known to take as long as eight years to issue determination letters such as Lisa's, and that he was prohibited from filing suit in federal court until the EEOC had issued a determination. She also stated that, because she had numerous cases pending in that office during this time period, she would often inquire about the status of Lisa's matter while there on other business.

The complaint also alleged a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). As in Brittingham, the facts contained in the complaint did not specify the conduct that could form the basis for a possible violation of that RPC. Also as in Brittingham, the DEC found violations of RPC 8.4(c) based on facts that were not alleged in the complaint.

* * *

The DEC found that respondent's handling of Lisa's matter "showed a complete disregard for the client's needs and an inexcusable lack of diligence in representation," in violation of RPC 1.3 and RPC 1.1(a), noting that the complaint had not charged respondent with a violation of the latter RPC (gross neglect). The DEC also found that respondent "failed to keep [Lisa] reasonably informed by not returning his telephone calls, ignoring his letters and failing to provide him with copies of the correspondence between her and other parties," in violation of RPC 1.4(a). The DEC dismissed the charge of a violation of RPC 1.5(a) (excessive fees) for lack of clear and convincing evidence.

As in the Brittingham matter, the DEC made improper findings of violations of RPC 8.4(c). Those were:

> Falsifying the date of the alleged EEOC violation in an attempt to camouflage her lack of diligence in filing her client's claim on time; instructing opposing counsel to forward her client's money to her and cashing the check herself without notifying her client or obtaining his approval; not depositing the client's money in a trust account; and claiming that she had no idea how the money got into her account, even though the check had 'For Deposit Only' stamped on it, with her account number handwritten on it.

II. The Lisa Matter

Unquestionably, respondent mishandled the EEOC claim. She allowed it to be dismissed as out of time, having had three hundred days to file it. For this reason alone, we found both lack of diligence and gross neglect, in violation of RPC 1.3 and RPC 1.1(a), respectively.

With regard to the allegation that respondent failed to communicate with Lisa, there was conflicting testimony. Respondent claimed that she kept Lisa informed about events in the case when she could, but that he was difficult to reach. On the other hand, Lisa claimed that respondent failed to inform him of important aspects of the representation, such as her receipt of the funds from Drexel. Moreover, the record includes periods of time – twenty months from July 1995 to March 1997 and twenty-two months from April 1997 to February 1999 – with no written communication from respondent. In fact, Lisa resorted to certified mail in his dealings with respondent, because of his difficulty in reaching her. We found no reason to doubt Lisa in this regard. On balance, the evidence shows a general lack of communication with Lisa, particularly later in the representation. Therefore, we found a violation of RPC 1.4(a).

With regard to RPC 8.4(c), evidence was introduced at the DEC hearing on charges that could not have been gleaned from the complaint. Respondent's counsel vigorously objected to the introduction of such evidence, complaining of lack of notice. However, as in Brittingham, the DEC ignored due process concerns and proceeded on the charges. First, the DEC found a violation of RPC 8.4(c) for respondent's insertion of the handwritten date on the EEOC form. Beyond the unsubstantiated EEOC statement that the date had been changed to fit the last-harm date within the time limitations, the only evidence on this issue came from respondent. She testified that she manually corrected the date upon realizing that the wrong date appeared on the submission. It could be that she was lying, but it could also be true. In any event, respondent was not on notice, from the contents of the complaint, that this serious

charge would be addressed at the hearing. We, therefore, dismissed the DEC's finding in this regard.

The DEC also found that respondent violated RPC 8.4(c) when, without Lisa's knowledge and consent, she instructed Drexel's attorneys to send Lisa's paycheck to her. Respondent was not on notice that this topic would be addressed by the DEC. Nevertheless, she explained that she did not recall receiving any money from Drexel and that the June 29, 1995 retainer agreement specified that the entire amount of the Drexel funds, $5,553, was earmarked for expenses. Moreover, she stated, the agreement required Lisa to pay an initial retainer of $2,500, $2,000 of which was to come from the Drexel funds. Respondent also noted that she and Lisa had read the retainer agreement "paragraph by paragraph" and that he had acknowledged understanding its contents, prior to signing it. To further complicate matters, on the day before the hearing, the presenter obtained a canceled check from Drexel that had been deposited in respondent's business account, in the amount of $2,077.42. It is not clear if that was all the money that respondent received from Drexel. It could be that the entire $5,553 was never turned over to her. Once again, there was deeply contradictory evidence and conflicting testimony on an issue that was not addressed in the complaint. On this basis, we declined to find a violation of RPC 8.4(c) with regard to Lisa's paycheck.

As in Brittingham, the DEC found a violation of RPC 8.4(c) on the basis that respondent did not deposit the retainer money in her attorney trust account. Once again, not only was this charge not mentioned in the complaint, but the DEC finding was clearly erroneous. As noted above, barring the client's specific direction that a retainer be placed in

the attorney's trust account, it may be deposited in the attorney's business account. In this case, respondent pointed out, the retainer agreement specifically provided for at least $2,000 of the Drexel funds to be applied directly to her fees and for the remainder to be escrowed for expenses. We, thus, dismissed the DEC's finding in this context.

Finally, the DEC found a violation of RPC 8.4(c) for respondent's claim "...that she had no idea how the money [the Drexel check] got into her account, even though the check had 'for Deposit Only' stamped on it, with her business account number handwritten on it." This charge, too, was not part of the complaint. Because there is no further explanation in the panel report, we could only surmise that the DEC disbelieved respondent, who testified that a secretary in her office must have deposited the check into her business account. Respondent stated that the handwriting on the check belonged to a secretary and had no recollection of depositing the check herself. The DEC must have presumed that, despite respondent's testimony, it was she who wrote on the rear of the check and stamped it for deposit, and then lied about not recalling it. That finding was unsupported by clear and convincing evidence and, therefore, we dismissed it. In any event, it was not addressed in the complaint.

In conclusion, despite a lengthy record that addressed numerous issues, in this matter we were left with respondent's gross neglect, lack of diligence and failure to communicate with the client, in violation of RPC 1.1(a), RPC 1.3 and RPC 1.4(a), respectively.

III. The Rochester Matter – District Docket No. IV-00-039E

The complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(a) (unreasonable fee) and RPC 8.4(c) (deceit or misrepresentation).

On or about January 5, 1997, Lewis Rochester consulted with respondent to represent her in a divorce matter filed by her husband. The written fee agreement, dated January 15, 1997, required a $650 retainer for the preparation of a settlement offer and, if a counterclaim was required, an additional $1,000 retainer. The agreement also stated that, if Rochester paid $350 toward the counterclaim immediately, the $650 would be credited toward the $1,000. Further, the agreement contemplated that, once the retainer was paid in full, there would be a monthly payment plan "to contribute toward costs of your civil litigation, should it exceed the retainer amount."

In April 1997, respondent advised Rochester that she required an additional $350 payment and a $175 filing fee in order to "file the case in court."

On April 30, 1997, respondent filed a counterclaim. A trial date was set for August 13, 1997. Because Rochester's husband failed to appear on that date, the court rescheduled the trial matter and awarded Rochester $500 as reimbursement for travel expenses.

After a December 4, 1997 trial, the court issued a divorce decree and awarded Rochester a lump sum settlement of $2,500 from her husband.

Thereafter, Rochester called respondent on numerous occasions to request a copy of the divorce decree, a final bill and an accounting of the time spent on the case. According to

Rochester, respondent agreed to forward the settlement and award monies, but never did so. Respondent kept those funds, in the amount of $3,000, in payment of her counsel fees.

In addition, at the DEC hearing, a motion from respondent's adversary, seeking the entry of default and dated April 3, 1997, was produced for the first time. Respondent explained that she had entered her appearance on or about January 17, 1997, just two days after her retention. She surmised that her original notice of appearance must have been lost in the mail, because she had mailed it to the court and was not listed to receive the default motion. Nevertheless, if an order was entered (the record contains none), it must have been vacated, because the matter was on track in late April 1997.

* * *

The DEC found that respondent lacked diligence for allowing the entry of default against her client, ignoring Rochester's requests for the settlement funds and not furnishing documents in the case, in violation of RPC 1.3. The DEC found also that respondent failed to communicate with Rochester by failing to send her a final itemized bill for services and failing to provide copies of important documents in the case, in violation of RPC 1.4(a). Finally, the DEC found two violations of RPC 8.4(c), as discussed below.

III. The Rochester Matter

The DEC found that respondent lacked diligence in her representation, partially on the basis that she allowed a default judgment to be entered against Rochester. Although the

complaint charged lack of diligence, nowhere did it mention a default. Therefore, we dismissed that specific finding.

The DEC also found lack of diligence for respondent's alleged disregard of Rochester's "repeated inquiries and attempts to obtain the divorce decree" and failure "to forward the settlement amount to her client." These findings, however, even if true, would not amount to lack of diligence, but rather failure to communicate with Rochester, in violation of RPC 1.4(a), as well as failure to safekeep property, in violation of RPC 1.15 (b), both of which are discussed below.

Respondent testified that the matter was a simple divorce, with no children and no significant assets to distribute. Nevertheless, she added, the parties quarreled to such a degree that a counterclaim became necessary. Contrary to the DEC's finding of lack of diligence, it appears that respondent obtained good results for Rochester. Respondent testified that, over the course of the representation, she attended at least ten conferences and hearings in the matter. Rochester admitted to the DEC that she had attended three court hearings with respondent. Rochester had no quarrel with the results of the case or the timeframe for its resolution.

RPC 1.15(b) was not charged in the complaint. Respondent was, however, on notice that the use of the award and settlement funds would be litigated at the DEC hearing. Respondent testified that she applied the funds to her fee because Rochester had consented to such use. According to respondent, at the final hearing, during which the judge placed the terms of the divorce judgment on the record, Rochester understood that she was to receive

$2,500 from her ex-husband as a final settlement. According to respondent, Rochester was surprised that she received anything at all and told respondent to apply the money to her legal fees. Respondent went so far as to say that the judge had awarded that amount specifically for her fee. She alleged that the final judgment, which was drafted by her adversary and entered by the court, inadvertently omitted any specific language regarding the method of payment of her fee. According to respondent, those factors and her client's prior authorization led her to apply the funds to her fee.

Rochester flatly denied that she ever authorized respondent to use the $2,500 for fees. In fact, she stated that respondent called her, when respondent received the funds, and told her that she would immediately mail them to her. Over the next few weeks, Rochester claimed, she called respondent three times to request the funds, but respondent never returned her calls.

Respondent presented no other evidence to support her testimony on her version of the events. She did not memorialize Rochester's alleged consent. Moreover, the fee agreement did not provide for the settlement funds' application to fees. Since respondent did not discharge her burden of proof, after asserting the defense of consent, we concluded that no such agreement existed and found that respondent's failure to deliver the settlement funds constituted failure to safekeep property, in violation of RPC 1.15(b). Although respondent was not specifically charged with a violation of RPC 1.15(b), the record developed below contains clear and convincing evidence of a violation of that RPC. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, we

deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976). Here, we determined that a finding of misconduct would not violate respondent's procedural rights because the issue was fully addressed below, there were no objections from respondent, and the nature of the finding is not so serious that we would be doing respondent an extreme injustice because of harsh consequences that might flow from the finding.

With regard to failure to communicate with Rochester, the DEC found that respondent violated RPC 1.4(a) by her failure to produce a final bill upon the conclusion of the case, to explain that she intended to retain the settlement funds, and to send Rochester a copy of the divorce decree.

Respondent took issue with the communication aspect of the complaint, testifying that she kept Rochester informed of the status of the case. Rochester had provided two addresses at which she could be reached, one in-state and the other in Maryland. The first address was that of her sister's house, which was very near respondent's Gibbstown office. The Maryland address was her home address. Respondent stated that, on several occasions she had mailed items to her sister's New Jersey address and had called Rochester in Maryland on several occasions. With respect to the final bill, respondent asserted that she gave it to Rochester at the final court hearing. Finally, with regard to the divorce decree, respondent claimed that she had personally dropped it off at the sister's house.

There is no evidence in the record to corroborate respondent's testimony in this regard. Moreover, there is no reason to disbelieve Rochester's testimony that she had

repeatedly attempted to secure the funds, the divorce decree and a final bill from respondent. On balance, Rochester seemed the more credible witness on these issues. For all of theses reasons, we found a violation of RPC 1.4(a).

The DEC dismissed the allegation that respondent charged an excessive fee, finding no clear and convincing evidence that it was unreasonable. We agreed with the DEC and dismissed that charge.

Finally, with regard to the alleged violation of RPC 8.4(c), the only facts contained in the complaint that could have given rise to a violation of that rule were contained in paragraphs seventeen and nineteen, which read as follows:

> 17. Respondent did tell grievant, however, that she would forward grievant's $3,000 ($2,500 + $500) award shortly.
>
> . . . .
>
> 19. In her response to the grievance, respondent claimed that she kept all sums she received in this matter in payment of her counsel fees.

The DEC found first that respondent "repeatedly lied to [Rochester] by promising to mail [the settlement funds] to her." The DEC obviously disbelieved respondent's testimony that Rochester had agreed to respondent's application of the settlement funds to her fees. Ordinarily, we defer to the DEC on issues of witness credibility. We were not convinced that the evidence clearly and convincingly demonstrates that, in addition to requesting a copy of the divorce decree, a final bill and an accounting of the time spent on the case, respondent told Rochester that she would be sending the $3,000 to her. Thus, we dismissed that allegation.

The DEC found also that respondent "fraudulently misrepresented the amount of hours and the dates on which she worked on [Rochester's] case." This finding was contrary to the DEC's determination that respondent's fee was not unreasonable. We, therefore, dismissed it.

The DEC also found that respondent "backdated the entry of appearance to make it appear as though she had promptly entered an appearance on behalf of [Rochester], when in fact she had [sic]." Finally, the DEC found that respondent misrepresented in the final bill that the $500 award was for attorney fees, when, in fact, it was meant to reimburse Rochester for travel expenses. We were unable to agree with these last two findings by the DEC. While it is true that the final bill was at issue, from the contents of the complaint respondent could not have known that these other serious issues were of concern to the ethics authorities. Certainly, accusations of backdating a notice of appearance, creating bogus fee bills, and misrepresenting the contents of court orders to a client are so serious that they require advance notice. Because respondent was not made aware that those charges would be addressed, due process required us to dismiss them.

IV. The Cassidy Matter – District Docket No. IV-00-027E

On July 26, 1999, Deborah Cassidy appeared in Clayton Borough Municipal Court to answer a charge of driving while under the influence of alcohol.

Cassidy requested a postponement to retain respondent as counsel. At the time, respondent was representing her in a divorce matter. The court rescheduled the hearing for

August 23, 1999. On or about August 15, 1999, Cassidy retained respondent and paid her $1,000. Respondent took no action until Friday, August 20, 1999, when, allegedly, she called the court and also sent a letter notifying it of her appearance and requesting an adjournment of the hearing, which had been rescheduled for Monday. The court, however, had no record of respondent's call or letter.

On August 23, 1999, respondent and Cassidy failed to appear, without any prior notice to the court. The next day, respondent called the court, stating that she had already sent a letter of representation to the police department. The municipal court judge, the complainant herein, testified that court personnel checked with the police department and determined that neither had received a letter from respondent. Nevertheless, the court adjourned the matter, on the condition that respondent immediately "fax" a letter of representation. Respondent agreed to forward the letter, but the court received none.

On August 30, 1999, a warrant was issued for Cassidy's arrest. On September 2, 1999, Cassidy phoned the court, understandably upset about the warrant. She later called respondent, who then forwarded the letter of representation to the court that day. The following day, the judge rescheduled the matter for September 13, 1999. Court personnel called respondent and left a message on her answering machine, advising her of the new date. In addition, on September 7, 1999, the court sent scheduling notices to both respondent and Cassidy.

On the September 13, 1999, hearing date, respondent called the court to advise it that she could not attend the 9:00 a.m. hearing because she was scheduled to appear before "the

New Jersey Supreme Court."

Shortly thereafter, respondent sent a facsimile to the court, stating that she had unsuccessfully attempted to contact the judge at both his law office and the court. The judge testified that no calls had been received from respondent at either location. After respondent's attorney informed the judge that respondent's scheduled appearance before the New Jersey Supreme Court was at 2:00 p.m. in Trenton, the court adjourned the matter to 6:00 p.m. the following day, in another municipality where the judge also sat. However, because court personnel were unable to reach respondent in time for the hearing, the case was ultimately adjourned until September 27, 1999.

On the penultimate adjourned date, September 27, 1999, at approximately 6:15 a.m., respondent telephoned the judge at his home to request yet another adjournment. The judge testified that he thought it unprofessional for respondent to call his home, that he told her never to call him there again, and that he denied her request. Neither respondent nor Cassidy appeared in court that day. Therefore, the judge rescheduled the hearing to October 13, 1999.

On September 28, 1999, respondent was temporarily suspended from the practice of law based on allegations that she might have misappropriated escrow funds. She was not reinstated until October 26, 1999. She did not appear at Cassidy's October 13, 1999 hearing, although Cassidy was present. By that time, the judge knew of respondent's suspension and had arranged for a public defender to represent Cassidy. The matter was concluded that day. According to the judge, respondent never advised the court, prior to the hearing, of her suspension or inability to appear.

The complaint alleged that respondent violated RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 3.3 (b) (knowingly making false statements of material fact or law to a tribunal), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

* * *

The DEC found that respondent lacked diligence, in violation of RPC 1.3, for her chronic failure to make timely adjournment requests in the case, which led to a delay of several months in the resolution of the case. For the same reasons, the DEC found that respondent failed to expedite litigation, in violation of RPC 3.2.

The DEC found also that respondent made five false statements to the municipal court, as follows: (1) that she could not appear for the September 13, 1999, hearing at 9:00 a.m. because she did not have enough time to appear there before her Supreme Court hearing later that day; (2) that the Trenton matter was a "Supreme Court" matter, when it was actually a Disciplinary Review Board matter; (3) that she could not appear in court until she received discovery, when she had already received and forwarded it to her own expert; (4) that she had not received notices of the court hearings; and (5) that she had contacted the municipal court on several occasions, when " none of the court representatives received any messages from her."

* * *

Cassidy's was a straightforward municipal court matter for which she paid respondent a $1,000 retainer. Thereafter, all respondent accomplished between August 15, 1999, and her

September 28, 1999, suspension, was to obtain several adjournments. In fact, the judge testified that he had granted the adjournments not because of respondent's requests, which had been made either on the day of the hearing or thereafter, but to prevent harm to Cassidy, whom he viewed as an innocent party to respondent's misconduct.

For her part, respondent admitted that her office received the court's notices. However, she stated, she had traveled to Georgia on August 20, 1999, and had not returned until September 11, 1999. According to respondent, she believed that the court would automatically adjourn the matter because municipal courts "always" give an initial adjournment. She admitted, however, that she traveled to Georgia not knowing if the adjournment would be granted and that she left instructions for her client not to appear. She took no steps to ensure that Cassidy was represented on August 23, 1999, in the event that the adjournment request was denied.

As to the adjournment requests on the hearing days of September 13, 1999, and September 27, 1999, respondent had no valid excuse for waiting until the eleventh hour to make them. On September 27, 1999, she once again requested an adjournment at the last moment.

In the short time that elapsed in this matter, respondent failed to act responsibly in the representation of her client's interests, among other things leaving her to fend off a warrant for her arrest. Unquestionably, her failure to timely resolve the matter violated RPC 1.3. We did not find, however, that such conduct also violated RPC 3.2 (failure to expedite litigation).

The legislative history of that rule makes it clear that an attorney's obligation to make an affirmative effort to expedite litigation arises from the attorney's rule as an advocate:

> Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose.... The question is whether a competent lawyer acting in good faith would regard the cause of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.
>
> [The Legislative History of the Model Rules of Professional Conduct: Their Development in the ABA House of Delegates. Rule 3.2 and Comment as Adopted]

We found that RPC 1.3 (lack of diligence) is, thus, the more appropriate rule for respondent's failure to act with commitment and dedication to Cassidy's interests.

We also carefully reviewed each of the DEC's determinations that respondent made false statements, in violation of RPC 3.3(b) and RPC 8.4(c). The DEC found that respondent lied to the municipal court judge that the Trenton matter was a "Supreme Court" matter, when, in fact, it was a Disciplinary Review Board matter. The DEC was incorrect. Respondent's September 13, 1999, appearance was before the Supreme Court. Respondent had been ordered to show cause, on that day, why she should not be temporarily suspended for her failure to return a fee to a client, as directed by a fee arbitration committee. We, therefore, dismissed the finding that respondent made a misrepresentation to the DEC about the nature of her 2:00 p.m. hearing on that day.

Also, according to the DEC, respondent told the municipal court judge that she could not appear in court at 9:00 a.m. because she needed time for travel and preparation with her

attorney for the 2:00 p.m. Supreme Court appearance. The DEC did not find that the 2:00 p.m. appearance was fabricated, but apparently disbelieved respondent's statement that she needed time to travel to Trenton and prepare for the Court hearing. Therefore, the DEC found that she violated RPC 8.4(c) (misrepresentation). We disagreed. We found no clear and convincing evidence that respondent lied to the municipal court about her need to have time to travel to Trenton and to prepare for the Supreme Court hearing. Respondent's counsel in this disciplinary matter, who also represented her on that occasion, argued that, given the gravity of the hearing before the Supreme Court and the travel time required from southern New Jersey, it was reasonable for respondent to believe that she could not attend both hearings. Indeed, R. 1:20-8(g) states that disciplinary matters shall take precedence over administrative, civil and criminal cases and that courts shall make reasonable accommodations for the attendance of counsel and other participants. On the other hand, the rule imposes on every participant the duty to give courts reasonable advance notice of potential litigation conflicts. Respondent should have given the municipal court reasonable advance notice of her required appearance before the Supreme Court. Her failure to do so was one more instance of the pattern of procrastination that she exhibited in the Cassidy matter, in violation of RPC 1.3.

We also found that respondent's last-minute requests for adjournment violated RPC 8.4(d) (conduct prejudicial to the administration of justice). Although respondent was not charged with a violation of that rule, the complaint provided her with sufficient notice of a potential finding in this context. Furthermore, the issue was fully litigated below, with no

objections from respondent. Her due process rights, therefore, were not violated by our finding that her conduct impeded the administration of justice.

The DEC found further that respondent lied to the municipal court about not receiving discovery, when her own September 27, 1999, adjournment request had stated that she had just sent discovery to her expert for review. Throughout the DEC hearing, respondent maintained that she never received discovery from the municipal court. That contention came apart, however, when she was confronted with her own statement in the September 27, 1999, letter, which, she conceded, must have referred to her receipt of at least a portion of the discovery. In this instance, we found that respondent misrepresented that she had received no discovery and that such conduct violated RPC 3.3(a) (1) and RPC 8.4(c).

The DEC found also that respondent lied to the municipal court by repeatedly claiming that she had not received court notices, when she admitted at the DEC hearing that her office had probably received them. Because we were unable to find clear and convincing evidence to support this finding, we determined to dismiss it.

The DEC found a fifth and final falsehood "when respondent purported to have contacted the [municipal] Court but none of the Court representatives received any messages from her." We found this conclusion vague and not easily ascertained from the record. Respondent contacted the court at least twice during the month of September 1999, via letter, facsimile and telephone. It is not clear if these or some other contacts were the source of the DEC's disapproval. Therefore, we dismissed that charge as well.

V. The Eckrich Matter - District Docket No. IV-00-027E

On March 10, 1997, Joseph C. Eckrich received a ticket from the New Jersey State Police in Deptford Township for making an illegal u-turn. His matter was scheduled for May 26, 1999, before the Deptford Township Municipal Court. When Eckrich failed to appear in court on that day, a warrant was issued for his arrest.

On or about July 16, 1999, Eckrich retained respondent to represent him in the matter.[1] On that date, she wrote to the court to enter a plea of not guilty and to request that the arrest warrant be vacated on the basis that Eckrich had been out of the country on business.

On July 21, 1999, the judge vacated the warrant. The matter was set down for trial on September 15, 1999.[2] Although notices were sent to both Eckrich and respondent, neither one appeared at trial or notified the court that they would not be appearing. Therefore, the court issued a second warrant for Eckrich's arrest.

During respondent's temporary suspension, from September 28, 1999 to October 26, 1999, she refrained from all activity in Eckrich's case and did not notify him of her suspension until the day after her reinstatement.

Respondent testified that she read the rules governing suspended attorneys in New Jersey and spoke to the OAE Director about her obligations as a suspended attorney.

[1] Respondent chose not to disclose to the municipal court that Eckrich was her husband. That relationship was not revealed until the ethics authorities began investigating this matter.

[2] The judge/complainant in the Cassidy matter also brought the Eckrich matter to the attention of the ethics authorities.

According to respondent, she concluded from her research and discussion with the OAE that the same rule that required her to notify her clients of the suspension also prohibited her from contacting her clients in any fashion. Therefore, she claimed, she determined that she could not speak to her husband about his case until after her reinstatement.

The day after her reinstatement, October 28, 1999, respondent wrote to the municipal court to advise it that she was back on the case. She also noted that court personnel, not Eckrich, had told her that a second arrest warrant had been issued. Respondent's letter also stated as follows:

> Previously I had been made (wrongfully) ineligible to practice and was barred from contacting all clients and the court under the rules.

The complaint alleges that respondent violated RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

* * *

The DEC found that respondent lacked diligence and failed to expedite litigation, in violation of RPC 1.3 and RPC 3.2. It based its finding on respondent's failure to take any action after her initial notice of appearance and, in particular, on her failure to appear at three consecutive court dates and to advise the court of her temporary suspension.

The DEC also found that respondent knowingly made false statements of material fact and misrepresentations, in violation of RPC 3.3(a)(1) and RPC 8.4(c), when she claimed that

she had not received court notices regarding trial dates.

* * *

The DEC was correct to find a violation of RPC 1.3.[3] Respondent did little else in the case beyond entering her appearance in July 1999. This matter was a simple traffic ticket situation, complicated principally by her lack of attention to her husband's case. As a direct result of respondent's carelessness, a second warrant was issued for Eckrich's arrest and three court appearances were brushed aside. The matter was not resolved for almost a year. For those reasons, we found a violation of RPC 1.3.

The DEC was also correct in dismissing respondent's incredible assertion that she did not receive notices from the court concerning trial dates in the matter. There is a recurring theme in these matters regarding undelivered or lost mail. Yet, respondent never introduced evidence that she had trouble with mail service to her office. Moreover, no mail for respondent was returned to the court as "undeliverable." This scenario becomes all the more incredible when we consider that respondent's client was also her husband. She certainly had opportunities to question him about his receipt of court notices that she was expecting in the case. Respondent's testimony was simply not believable. We found that her misrepresentations to the court and to the ethics authorities about court notices violated RPC 3.3(a) (1) and RPC 8.4(c).

Although the issue of compliance with R. 1:20-20 was part of the allegations of the

[3] For the same reasons expressed in Cassidy, above, we found that RPC 3.2 is inapplicable to this matter.

complaint and was discussed at the hearing below, the DEC did not make two possible findings in this regard. The first has to do with respondent's failure to notify the municipal courts of her suspension in both Cassidy and Eckrich. The judge in those matters testified that the court received no information from respondent regarding her suspension until she re-entered her appearance after her reinstatement. Moreover, respondent admitted that she had delegated that task to another attorney. By not notifying the municipal courts, respondent failed to comply with the rules governing suspended attorneys, as required by the Supreme Court order. The second possible finding relates to respondent's understanding that R. 1:20-20 prohibited her from contacting her clients to inform them of her suspension. Here, respondent would have us believe that she interpreted the rule requiring notice to also have prohibited her from giving it. The DEC found respondent's story so unbelievable as to be contrived. We agreed. We, therefore, found that the two instances of conduct described above violated R. 1:20-20

* * *

One issue remains. The complaints charged respondent with a pattern of neglect, in violation of RPC 1.1(b). We generally require a showing of neglect in at least three matters, before finding a violation of RPC 1.1(b). See In re Baiamonte, 170 N.J. 184 (2001). Although we found gross neglect only in Brittingham and Lisa, when we view respondent's conduct in these cases in conjunction with the matters that led to her prior discipline, a distinct pattern of neglect emerges. We, thus, found a violation of RPC 1.1(b).

* * *

In all, respondent grossly neglected Brittingham and Lisa, in violation of RPC 1.1(a); lacked diligence in Brittingham, Lisa, Cassidy and Eckrich, in violation of RPC 1.3; failed to communicate with the client in Brittingham, Lisa and Rochester, in violation of RPC 1.4(a); lied to a court in Cassidy and Eckrich, in violation of RPC 3.3(a) (1) and RPC 8.4(c); failed to return the entire file to Brittingham upon termination of the representation, in violation of RPC 1.16(d) and RPC 8.4(d); and prejudiced the administration of justice in Cassidy, in violation of RPC 8.4(d), when she made last minute requests for adjournments.

Cases involving conduct similar to respondent's, combined with the presence of a disciplinary record, have resulted in suspension. See, e.g., In re Aranguren, 165 N.J. 664 (2000) (six-month suspension for attorney who, in five matters, exhibited gross neglect, a pattern of neglect, lack of diligence, failure to communicate and failure to expedite litigation; the attorney made misrepresentations in three of the matters, including one in a certification to a trial court; the attorney also failed to return the files to the client or client's counsel in three of the matters and failed to cooperate with the disciplinary system during the investigation; prior admonition); In re Waters-Cato, 142 N.J. 472 (1995) (one-year suspension for gross neglect, pattern of neglect, misrepresentation and failure to disclose material facts, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice; the attorney had a prior three-month suspension in 1995 and a private reprimand); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for misconduct in seven matters, including gross neglect, pattern of neglect, lack of diligence,

failure to communicate with the clients, failure to deliver client funds, failure to return files, failure to cooperate with disciplinary authorities and misrepresentation of the status of matters to clients). As noted earlier, respondent has had a three-month suspension, a six-month suspension, a reprimand and an admonition. She has shown no signs of understanding her responsibilities as an attorney or of learning from her prior mistakes. Therefore, we unanimously determined to impose a one-year prospective suspension. We also determined to require respondent to complete twelve hours of professional responsibility courses before reinstatement. We further determined not to consider respondent's reinstatement before the completion of the disciplinary matters pending below. Prior to reinstatement, respondent must provide proof of fitness to practice law, as attested by a mental health professional approved by the OAE. Finally, after reinstatement, respondent must practice under the supervision of a proctor for a period of two years.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of E. Lorraine Harris
Docket No. DRB 03-150

Argued: June 19, 2003

Decided: August 15, 2003

Disposition: One-year suspension

Members	*Disbar*	*One-year Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		9					

Julianne K. DeCore
Acting Chief Counsel