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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 95-240

IN THE MATTER OF  MARIE CHEN,  AN ATTORNEY AT LAW	: : : : : : : : : :	Decision of the Disciplinary Review Board
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Argued: September 20, 1995

Decided: December 4, 1995

Stephen B. Rubin appeared on behalf of the District XIII Ethics Committee.

Respondent failed to appear, despite proper notice of the hearing.

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

This matter was before the Board based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). The formal complaint charged respondent with violations of RPC 1.1 (subsection not specified); RPC 1.3 (lack of diligence); RPC 1.4 (subsection not specified); RPC 8.1 (failure to cooperate with the disciplinary authorities) and RPC 8.4 (subsection not specified).

Respondent was admitted to the New Jersey bar in 1986. On October 2, 1995, the Court entered an Order reprimanding respondent for gross neglect and failure to communicate in two matters.

The within misconduct involved two separate matters.

The Tedesco Matter

In or about October 1993, Bonita Sue Tedesco (hereinafter "grievant") retained respondent to file an action for divorce in her behalf. Grievant paid respondent an initial sum of \$250 on October 14, 1993. She also delivered to respondent some documents relating to child support payments grievant had earlier been ordered to make. Apparently, grievant wished to have the support issue addressed in the matrimonial action.

Shortly after respondent was retained and through February 1994, grievant placed approximately sixteen telephone calls to respondent in an attempt to discuss the status of her case. Grievant was able to speak with respondent on only two or three of those occasions. Respondent never returned the remainder of those calls or communicated with grievant in writing. On one of those occasions when grievant was able to speak with her, respondent instructed her to send \$135 so that respondent could file the complaint for divorce. On or about December 17, 1993, grievant forwarded respondent a personal money order payable to the Superior Court of New Jersey in the amount of \$135.

Grievant testified that she was never called upon to sign a certification or affidavit ancillary to any complaint and did not ever receive notice of any court date. Respondent advised grievant during several conversations that the courts were slow and that she

had to wait to file the complaint. T12-14.<sup>1</sup> Moreover, grievant telephoned the bank from which she obtained the money order and learned that it had never been cashed. These factors indicate that respondent never filed a complaint in grievant's behalf.

At some point after February 1994, grievant retained the services of another attorney to pursue her matter. She attempted to reach respondent by telephone on many subsequent occasions in order to retrieve the documents provided to respondent and left messages on respondent's answering machine. At some point, she learned that respondent's telephone had been disconnected. Respondent did not return grievant's telephone calls or her documents.

#### The Sellers Matter

In or about March 1994, Wendell Sellers (hereinafter "grievant") retained respondent to represent him in a civil action that he had been prosecuting pro se. Specifically, grievant retained respondent for the express purpose of opposing a motion for summary judgment filed by the defendants. Grievant agreed to pay respondent a total fee of \$750 to defend that motion. By March 10, 1994, he had paid respondent approximately \$300-\$350 towards her fee.

Later that month, grievant received in the mail from one of the defense attorneys a copy of an order granting summary judgment

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<sup>1</sup> "T" refers to the transcript of hearing before the DEC on January 11, 1995.

in favor of three remaining defendants and against grievant, the plaintiff. The order, which was signed on March 21, 1994, contained a handwritten notation indicating that no opposition to the motion had been filed.

After grievant received a copy of the order, he went to respondent's home to ascertain what had transpired. Respondent assured him that she had filed a letter-brief in opposition to the motion. She then gave grievant a copy of a letter-brief, undated and unsigned. Exhibit S-3. Respondent further maintained that she had appeared in court on the scheduled date of the motion. However, the defendant's attorney did not appear on that date, apparently because he had not received a copy of respondent's brief in opposition to the motion. Neither had the court. Respondent advised grievant that she had placed all copies of her brief in the same "container" but that she assumed they all "got lost" due to the snowstorm. T29. She then advised grievant that she had filed a motion for reconsideration of the order that very day and that the matter had been scheduled for oral argument on April 15, 1994.

Thereafter, grievant unsuccessfully telephoned respondent on several occasions to learn the status of his matter. Despite many messages left on her answering machine, respondent never returned any of grievant's telephone calls. Grievant, therefore, telephoned the judge's law clerk on April 19, 1994. He learned from the law clerk that respondent had never filed a motion for reconsideration. When grievant again attempted to telephone respondent, he found that her number had been disconnected. Grievant then telephoned

the judge's law clerk to learn what would be required to reinstate his lawsuit. By that point, however, only ten days remained to file an appeal of the order granting summary judgment. Grievant testified that by then he was just too exhausted to pursue the matter.

Respondent did not file an answer to the formal ethics complaint and did not appear at the DEC hearing. At the conclusion of all testimony, respondent telephoned the panel chair, who then spoke with respondent on the speakerphone in the presence of all parties. Although respondent admitted that she had received proper notice of the DEC hearing, she maintained that she telephoned the committee secretary a day earlier, but misunderstood the secretary to say that respondent should call the DEC on the day of the hearing, as opposed to appearing. She had telephoned the secretary and the DEC to request an adjournment of the hearing because she had been involved in an automobile accident in mid-December and was still experiencing problems from her injuries. Specifically, respondent alleged that she could not drive, except for very short distances, because her pain medication caused her to become drowsy. In addition, she maintained, her automobile had been damaged in the accident, she had no funds with which to repair the damage and all her friends who owned automobiles worked. She, therefore, had no means of transportation to the DEC hearing. Respondent added that, even if she had some means of transportation, she still would not have been able to attend the hearing because she needed to stay at home with her daughter, who had become ill. (Her babysitter had

also fallen ill). In respondent's words, she was "pretty much stuck — [she had] no way of getting there and that's what [her] problem was last time." T41.

The "last time" to which respondent referred was an earlier scheduled hearing for which she had requested an adjournment for the same reason. That hearing, scheduled for December 28, 1994, had been rescheduled for reasons unrelated to respondent's problems. In fact, by the time respondent telephoned the DEC secretary to request an adjournment, that hearing had already been rescheduled, apparently to accommodate a witness or a party. There is no doubt, however, and respondent admitted, that she knew then that the hearing had been rescheduled for January 11, 1995.

The DEC chair denied respondent's request for an adjournment and closed the record. In making that determination, the chair commented that respondent could have made a more concerted effort to attend the DEC hearing. Respondent never asked that she be allowed to give substantive testimony by way of telephone and that option was apparently never explored.

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The DEC found respondent guilty of unethical conduct in both matters. The DEC made a majority of its determinations on a collective basis. Specifically, the DEC found that respondent exhibited a pattern of neglect in her "handling of legal matters

entrusted to her by failing to file pleadings on behalf of her clients after having been retained to do so, failing to file opposition papers to a motion for summary judgment . . . , and her repeated and consistent failure" to return her clients' telephone calls, all in violation of RPC 1.1(b). Hearing Panel Report at 7.

The DEC also found that respondent had violated RPC 1.4(a) by her failure to keep her clients reasonably informed about the status of their matters and to promptly comply with reasonable requests for information and the return of her client's files. The DEC further found respondent guilty of a failure to pursue both client matters diligently, in violation of RPC 1.3. Finally, the DEC found respondent guilty of a violation of RPC 8.1(b) for her failure to cooperate with the DEC. The DEC made an additional finding of a violation of RPC 8.4(a) (violation of the Rules of Professional Conduct).

While the DEC found, as fact, that respondent misrepresented to Sellers both that she had filed a brief in opposition to the motion for summary judgment and that she had filed a motion for reconsideration of the order granting summary judgment, it did not make a specific finding of a violation of RPC 8.4(c), even though misrepresentation was factually charged in the complaint. Presumably, the DEC's failure to find that specific violation was an oversight, inasmuch as the record clearly and convincingly supports a finding of violation of RPC 8.4(a).

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Following a de novo review of the record, the Board is satisfied that the DEC's finding that respondent was guilty of unethical conduct is clearly and convincingly supported by the record. Respondent was guilty of gross neglect in both matters, which, when combined with those matters recently for which she was recently reprimanded, form a pattern of neglect. Although the complaint in this matter did not specifically charge a pattern of neglect with reference to those prior matters, it did charge a violation of RPC 1.1, which is certainly sufficient to put respondent on notice. Moreover, a finding of a pattern of neglect does not require the production and consideration of additional evidence. Therefore, a claim of lack of due process cannot be raised here.

In addition to respondent's neglect of her clients' concerns, respondent was guilty of a failure to communicate with her clients as well as a failure to diligently pursue their interests. More serious, however, was respondent's misrepresentation to Sellers as well as her failure to cooperate with the DEC. While the record does not clearly and convincingly support the DEC's finding that respondent never filed a brief in opposition to the motion for summary judgment, certainly the same cannot be said of respondent's representation to her client that she had already filed a motion for reconsideration, which, she contended, had been set down for hearing in April 1994.

Despite respondent's prior experience with the disciplinary



system, she has failed to live up to her responsibilities. Not only did respondent fail to file an answer to the ethics complaint, she also did not appear at the DEC hearing. While respondent may, indeed, have been injured in a prior automobile accident, it was clear, by her own admission, that she was able to drive about, at least to some extent. If she could not drive herself to the DEC hearing for some reason, certainly she could have and should have made more efforts to obtain transportation, such as taking a taxi. Moreover, respondent offered no excuse for her failure to file an answer to the complaint.

The issue of the appropriate measure of discipline remains. Respondent's misconduct in these matters, which spanned from October 1993 through April 1994, overlapped her prior misconduct both in nature and time (1992 through August 1994). This later misconduct might have been subsumed by the prior discipline (reprimand). However, respondent's misconduct in the Sellers matter post-dated the filing of the ethics complaint in the prior matters by approximately one month. Respondent was, therefore, on notice that her conduct was already the subject of review — apparently a lesson not well learned by respondent. Therefore, respondent should not receive the benefit of the overlap with the prior misconduct. Moreover, in aggravation, respondent has failed to cooperate with the DEC, without reasonable explanation. Finally, respondent not only grossly neglected her clients' matters, but she also misrepresented the status of her efforts to her client, Sellers.

Respondent's overall conduct in this matter is analogous to that of In re Marlowe, 121 N.J. 236(1990). In that case, the attorney received a three-month suspension for gross neglect and failure to communicate in two cases, lack of diligence, pattern of neglect, misrepresentation of the status of one matter and lack of cooperation with the DEC. There was also a finding of unauthorized practice of law based on his discussions and negotiations with law enforcement officials in Iowa. In addition, Marlowe, too, had already received a public reprimand.

Respondent appears to have some practice and management deficiencies, which could pose substantial problems to the unsuspecting or uneducated client. There are no substantive factors in this case that warrant the imposition of discipline different from that imposed in Marlowe. Therefore, the Board has unanimously determined to suspend respondent from the practice of law for a period of three months. In addition, respondent shall complete eight hours of professional responsibility courses prior to reinstatement and shall practice only under the supervision of a proctor, for two years following reinstatement. Finally, respondent shall submit to a compliance audit of her books and records to be conducted by the Office of Attorney Ethics.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/4/95

By: 

Lee M. Hymerling  
Chair  
Disciplinary Review Board