

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 99-180

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IN THE MATTER OF  
  
LUBA ANNENKO  
  
AN ATTORNEY AT LAW

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Decision

Argued: July 8, 1999<sup>1</sup>

Decided: May 10, 2000

Paul Felixon appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

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<sup>1</sup> At oral argument on July 8, 1999, respondent alleged that she had not been advised of the adjourned date of the DEC hearing. In light of this allegation, we carried this matter to September 24, 1999 and requested a letter from the DEC, detailing the history of notices to respondent and of her adjournment requests. We also directed respondent to reply to DEC's letter. When she failed to do so, we proceeded in the deliberation on the matter.

These matters were 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 1983. By Supreme Court order dated May 6, 1999 she was temporarily suspended from the practice of law for failure to satisfy a fee arbitration award and failure to pay a \$500 sanction to the Disciplinary Oversight Committee. She is suspended to date.

Respondent received a private reprimand on May 19, 1988 for gross neglect and failure to communicate with the client for eighteen months. In addition, respondent allowed the filed complaint to be dismissed for lack of prosecution.

On April 21, 1992 respondent received a private reprimand for lack of diligence. Respondent failed to file an answer in the client's behalf, resulting in the entry of a default judgment. Furthermore, respondent failed to take action, as requested by the client, on a writ of execution on the judgment.

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Three separate DEC matters - Marasco, Ott and Lucas are the current subjects of our review.

The Marasco Matter (District Docket No. IV-97-044E)

In or about September 1996 Pamela Marasco retained respondent to represent her in a divorce proceeding instituted by her husband. At the time, Marasco paid respondent a retainer of \$3,000 by check issued by her parents. Respondent deposited the check to her attorney trust account on October 1, 1996. No retainer agreement was executed for the representation. Marasco testified at the DEC hearing that, when she retained respondent, she lived in Chicago, Illinois and never met respondent in person. Rather, she had a telephone conversation with respondent at the inception of the case and on one subsequent occasion. Marasco claimed that, during the initial telephone conversation, respondent assured her that the \$3,000 retainer would more than cover the costs of a simple divorce. Marasco further testified that her answer to the divorce complaint was due in October and that, before that time, she sent several urgent facsimiles to respondent requesting information about her case. In addition, Marasco testified about the approximately sixty telephone calls that she placed to respondent's office during that time; only once did she receive a call back, but from respondent's secretary, not respondent. According to Marasco, she was never informed about any problems with her case or the actual status of the matter.

Fearing that respondent might not have filed an answer in her behalf, Marasco contacted the trial court in October 1996. She was told that respondent had not filed

an answer. Respondent was apparently granted an extension to file the answer until the end of December 1996. According to Marasco, she "panicked" about respondent's repeated failure to contact her. Marasco wrote respondent a gently worded letter, pleading for information about her case:

I am writing this letter as a last resort, as my several recent telephone calls have not been returned.

I understand that you may be busy, but there are some serious issues that I need to discuss with you.

Furthermore, I contacted the court this morning and was advised that you had not entered an appearance in my case, although you were retained weeks ago and your requested retainer fee was paid in full.

I am sorry that it has come to this, as I was very satisfied with your plans for handling the case when we spoke on the telephone, and was looking forward to working with you. However, as the deadline for filing an answer in my case is only a few days away and I have heard nothing from you, I will have no choice but to seek other counsel if I have not heard from you by the end of the day tomorrow.

Respondent ignored that letter. Therefore, by letter dated December 20, 1996 Marasco terminated the representation. An excerpt from that letter, sent by certified mail and facsimile, reveals Marasco's disappointment with respondent:

You have failed to even acknowledge to me any written documents showing you have done anything and you have been unavailable by phone for weeks. Because of this I had to make an emergency trip to N.J. for two days to retain Mr. Spevak. The cost to me - two days off

work and \$300 in travel expenses.<sup>2</sup> I sincerely hope you know how you have upset my life and my children's lives this Christmas and I expect a full return of the retainer and an apology in writing to me.

Luba, I was told you were ill. If this is true, I am very sorry, but this is no excuse for not having called me or having some kind of back-up system. You are a licensed professional with fifteen years of experience. I am very disappointed.

There is no evidence in the record that respondent ever acknowledged this letter or took any action in Marasco's behalf.

Finally, Marasco testified that she attempted to secure the return of her \$3,000 retainer and of her file, after she ended respondent's representation in December 1996. However, according to Marasco, only after filing a complaint for fee arbitration did she receive a refund. There is no indication in the record that the file was ever returned to Marasco.

For her part, respondent's answer denied substantially all of the allegations contained in the complaint. She did not appear at the DEC hearing.

With regard to the alleged failure to utilize a retainer agreement, respondent claimed that she "informed the Complainant of the expected fee structure and costs and mailed a Retainer Agreement which was never returned." Respondent never furnished that alleged retainer agreement to the DEC.

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<sup>2</sup> By this time, Marasco had moved from Chicago to upstate New York.

Respondent also denied that she was unavailable by telephone to speak with Marasco. She claimed that she “was in contact with Grievant, speaking with her via telephone on many occasions, including several in response to faxes sent, except in December of 1996 due to health problems.” There is no evidence in the record of an illness or of any communication with Marasco after respondent accepted the retainer.

Likewise, respondent denied that her conduct was grossly negligent or that she exhibited a lack of diligence. According to respondent, her “records indicate that a substantial amount of time was expended in the review of material and information, telephonic contact with the Grievant and Grievant’s husband, and document preparation, totaling in excess of twenty hours at the named charge of \$150 per hour.” Again, respondent offered no evidence to substantiate those claims.

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(a) and (b) (unreasonable fee and failure to utilize retainer agreement), RPC 1.16(d) (failure to surrender property of the client upon termination of the representation), RPC 1.15(d) (failure to maintain proper trust and business accounts in a New Jersey banking institution) and RPC 8.1(b) (failure to cooperate with the ethics authorities).

The Ott Matter (District Docket No. IV-98-015E)

On October 29, 1997 Edward Ott retained respondent to prepare wills for him and his wife, in anticipation of their planned trip to Mexico on November 7, 1997. Ott testified at the DEC hearing that he contacted respondent on a recommendation of Ott's daughter, who had previously retained respondent in an unrelated matter.

On October 29, 1997 respondent went to the Otts' home to discuss the wills, at which time Ott gave respondent \$125 check for the preparation of the wills. According to Ott, respondent told him that the wills would be ready before their departure.

Ott testified that, during an October 31, 1997 telephone conversation with respondent, she told him that she would deliver the completed wills to him on November 3, 1997. She did not, however. Upon his return from Mexico, Ott made numerous attempts over the ensuing months to contact respondent by leaving messages on her office answering machine. According to Ott, he never received a return telephone call, the completed wills or the return of the retainer.

In her answer, respondent denied any wrongdoing. She alleged that she had drafted the wills within days of the first meeting and that the Otts "were in no hurry" to have the wills drafted. Respondent alleged that she attempted to "fax" the wills to the Otts on several occasions. In addition, she denied receiving "numerous" telephone

calls or messages from the Otts. Finally, respondent alleged that the retainer was fully earned for work performed on the Otts' behalf.

As in Marasco, respondent did not testify at the DEC hearing. She presented no evidence in support of her version of events. Indeed, respondent did not produce the wills that she allegedly prepared in the Otts' behalf.

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.5(b) (failure to utilize retainer agreement).

The Lucas Matter (District Docket No. IV-97-059E)

This matter was due to be heard by the DEC at the same time as the Marasco and Ott matters. The complaint alleged violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(a) and (b) and RPC 1.16(d). However, as evidenced by the panel chair's comments at the conclusion of the DEC hearing, the main witness, Ms. Lucas, failed to appear at the DEC hearing. For that reason the matter was dismissed in its entirety.<sup>3</sup>

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<sup>3</sup> The DEC also dismissed the RPC 8.1(b) aspect of Lucas but gave no reason for that determination.

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Several additional alleged violations are common to the two complaints. With regard to the alleged violations of RPC 8.1(b) in Ott, Marasco and Lucas, Janette Garcia, an Office of Attorney Ethics' ("OAE") investigator assigned to the matters, testified at the DEC hearing about a series of five letters from the OAE to respondent, requesting information about those cases. Indeed, between September 1997 and April 1998 the OAE made numerous requests to respondent for information about the grievance. Several of the earlier requests might have been sent to respondent's former address. However, there is no doubt that respondent received the last letter from the OAE, sent to 104 Walt Whitman Boulevard, Cherry Hill, New Jersey. Included were several other letters requesting information about Marasco and Lucas, as well as subpoenas for respondent's complete files and ledger cards for each case.

On January 15, 1998 and April 2, 1998 respondent sent short letters to the OAE, in which she denied wrongdoing, claimed to have thick files that would evidence the work performed in behalf of her clients and asserted that she would at a later date come forward with this evidence. Nevertheless, respondent failed to turn over her files to the OAE in all three matters. Indeed, beyond filing answers to the

complaints, respondent presented no documentary evidence or testimony in these three cases.

Garcia also testified about several issues common to each of these matters. First among those was the allegation that respondent did not maintain a bona fide office for the practice of law in New Jersey, in violation of RPC 5.5(a). In this regard, Garcia testified that, on March 30, 1998, in an effort to confirm that respondent had received all of the documentation relevant to these matters, she drove to respondent's home office at 104 Walt Whitman Boulevard, Cherry Hill. She described the location as a residential area with single-family houses. She located respondent's home office only by the number "104" painted on the street side curbing in front of the house. According to Garcia, there was no indication anywhere on the property that the location was a law office. Garcia also spoke with a neighbor, who confirmed that respondent lived there, but who had no idea that there might have been a law office in the house.

Garcia also testified about respondent's attorney records, based on information subpoenaed from CoreStates Bank in January 1998. According to those records, respondent's trust account was closed in June 1997 because of a negative balance. The records also revealed that, although respondent deposited the \$3,000 Marasco retainer in her attorney trust account, she quickly transferred those funds to her

business account and wrote a series of checks to herself, thereby depleting those funds. It also appears that respondent did not maintain a trust or business account in New Jersey from June 1997 until May 1998, when she opened new trust and business accounts with CoreStates Bank. Again, with regard to the alleged failure to maintain a bona fide office and trust and business accounts in New Jersey, respondent produced no evidence to refute the allegations of the complaints.

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With very little explanation given for its findings, the DEC concluded as follows:

In Ott, the DEC found violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a). The DEC also found a pattern of neglect, in violation of RPC 1.1(b), and failure to cooperate with the disciplinary authorities, in violation of RPC 8.1(b)<sup>4</sup>.

In Marasco, the DEC found violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.16(d), RPC 1.15(d), RPC 5.5(a) and RPC 8.1(b).

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<sup>4</sup> It is unclear if the DEC intended its finding of a violation of RPC 1.1(b) to span both matters or only the Ott matter.

In Lucas, the DEC determined that, without the testimony of Ms. Lucas, the alleged ethics infractions could not be proven by clear and convincing evidence. Therefore, the DEC dismissed that matter.

Based on the nature of the violations and respondent's past ethics history, which, in the DEC's opinion, demonstrated a clear pattern of "certain violations," the DEC recommended that respondent be disbarred.

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Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Both the Ott and Marasco cases beg for respondent's explanation. Her failure to turn over her clients' files under subpoena, to appear or present evidence at the DEC hearing and to refute the allegations directs the conclusion that respondent has no excuse for her misconduct in these matters.

In Ott, there is no evidence that respondent put pen to paper in the Otts' behalf. Moreover, respondent simply ignored the Otts' numerous requests for information and, later, ignored the requested return of their \$125 retainer. The DEC was, thus,

correct to find violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a). We also find that respondent violated RPC 1.16(d) by failing to return the unearned retainer. Although respondent was not specifically charged with a violation of RPC 1.16(d), the facts in the complaint gave her sufficient notice of a possible finding of improper conduct in this regard and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of that rule. In light of the foregoing, we amended the complaint to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

In Marasco, respondent's conduct was egregious. In essence, she abandoned her client. Respondent accepted a \$3,000 retainer to represent an out-of-state client in a New Jersey divorce proceeding initiated by Marasco's then-husband. Respondent never filed an answer to the complaint and never replied to Marasco's sixty or so pleas for assistance and information. Worse yet, rather than admit to failing her client, respondent refused to return the retainer until the fee arbitration committee ordered her to do so. Respondent's serious misconduct reached its zenith when, in her answer to the ethics complaint, she made bare assertions that she had performed services in Marasco's behalf that warranted the retention of the entire fee. Respondent did not present one shred of evidence to support those contentions. In fact, respondent refused to turn over Marasco's file. All in all, respondent's conduct in Marasco was

grievous, causing not only financial but also emotional harm to her client, as demonstrated by Marasco's letter to respondent of December 20, 1996. We, thus, find that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4 (a). We also find that respondent violated RPC 1.5(b) for her failure to utilize a retainer agreement and RPC 1.16(d) for her failure to return the retainer upon Marasco's termination of the representation.

In the Lucas matter, the DEC correctly dismissed the charges, with the exception of respondent's failure to cooperate with the OAE in its investigation of the matter, as discussed below.

As previously noted, the DEC did not explain its finding of a pattern of neglect in violation of RPC 1.1(b). However, we find that, when respondent's misconduct in these matters is combined with the misconduct in prior matters for which discipline has already been imposed, a pattern of neglect is evident. Therefore, we find a violation of RPC 1.1(b).

With regard to the allegations of respondent's failure to cooperate with the ethics authorities, the evidence of misconduct is clear. Respondent ignored the ethics authorities' numerous requests for information throughout all three investigations. Although respondent filed answers to the formal complaints, her denials of wrongdoing were bare and unsupported by any documentation. Indeed, respondent

steadfastly refused to turn over subpoenaed documents to the OAE and failed to appear at the DEC hearing. Therefore, we find a violation of RPC 8.1(b) in all three matters considered by the DEC. We also find a violation in the “dismissal” matter, Lucas. After all, respondent’s duty to cooperate in that matter was not diluted simply because the grievant failed to appear at the hearing.

As to the alleged violation of the bona fide office rule, the only evidence in the record is that presented by the OAE investigator’s statements. Her personal visit to respondent’s “office” revealed what, for all intents and purposes, appeared to be a single-family dwelling. There were no signs that respondent’s law office was kept in that location. Given the circumstances of this case, where respondent refused to cooperate with the investigation of these matters, the OAE was hard-pressed to present any more evidence that respondent did not comply with the bona fide office rule. We therefore find a violation of RPC 5.5(a) on the strength of the investigator’s testimony alone, which respondent failed to refute by not appearing at the DEC hearing.

Finally, with regard to the allegation of a violation of RPC 1.15(d), for respondent’s alleged failure to maintain proper attorney trust and business accounts in a New Jersey banking institution, the OAE obtained records from CoreStates Bank confirming that respondent did not maintain proper trust and business accounts from

June 1997 to May 1998. Respondent did not deny that allegation or in any way suggest that she was not required, during that period of time, to maintain such records. Therefore, we find a violation of R.1:21-6 and RPC 1.15(d).

Respondent is not a newcomer to the disciplinary system. She has received two private reprimands and was temporarily suspended on May 6, 1999 for failure to satisfy a fee arbitration award and to pay a \$500 sanction imposed by this Board. Respondent remains temporarily suspended to date.

Respondent's callousness toward Marasco and Ott was appalling. As evidenced by Marasco's correspondence to respondent, Marasco was very respectful of respondent and reasonable in her requests for information about the case. There is every reason to believe that, had Marasco not been so quick to recognize respondent's total abandonment of her case and to retain a new attorney within several months of hiring respondent, the situation would have dragged on without resolution. Indeed, respondent went out of her way to make herself unavailable to Marasco, dodging in excess of sixty telephone calls, several facsimile transmissions and letters.

In Ott, there is no evidence to suggest that respondent did any more than accept the Otts' retainer. Indeed, the record allows the inference that, from the inception of the representations of these two clients, respondent had no intention to follow up on the work promised. Unquestionably, respondent abandoned Marasco and the Otts.

Discipline in other matters involving the abandonment of clients has ranged greatly, depending on the other ethics violations involved and the number of clients abandoned. See, e.g., In re Grossman, 138 N.J. 90 (1994) (three-year suspension where attorney signed a judge's name to a divorce judgment and gave it to his client to cover up his mishandling of the case; he also abandoned approximately two hundred cases after misrepresenting to the courts and clients that the cases had been settled); In re Mintz, 126 N.J. 484 (1992) (two-year suspension where attorney abandoned four clients and was found guilty of pattern of neglect, failure to maintain a bona fide office and failure to cooperate with ethics authorities); In re Bock, 128 N.J. 270 (1992) (six-month suspension imposed on attorney who, while serving as both a part-time municipal court judge and a lawyer, with approximately sixty to seventy pending cases, abandoned both positions by feigning his own death); and In re Velazquez, 158 N.J. 253 (1999) (three-month suspension imposed upon attorney who abandoned seven clients and was found guilty of gross neglect and pattern of neglect, failure to communicate with the client and failure to protect the clients' interests upon the termination of the representation in all seven matters. The attorney also engaged in conduct prejudicial to the administration of justice in three of the matters. That suspension was subsumed in Velazquez' disbarment case, In re Velazquez, 158 N.J. 253(1999).

Here, in addition to respondent's disregard for her clients, there is her cavalier attitude toward the disciplinary authorities. While she filed an answer to the ethics complaints, the unsupported denials contained in them evidence a total lack of understanding of the basic ethics principles expected from attorneys. In re Gavel, 22 N.J. 248 (1956). When respondent's failure to maintain a bona fide office and to maintain proper trust and business accounts is added to the mix, a term of suspension is warranted.

In light of the foregoing, a five-member majority of this Board determined to suspend respondent for six months. Four members voted to suspend respondent for one year. Prior to reinstatement, respondent is to provide proof of fitness to practice law, attested by a psychiatrist approved by the OAE.

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

Dated:

5/20/00



LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
**VOTING RECORD**

**In the Matter of Luba Annenko**  
**Docket No. DRB 99-180**

**Argued: July 1, 1999**

**Decided: May 10, 2000**

**Disposition: Six-Month Suspension**

Members	One-Year Suspension	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Cole		X					
Boylan		X					
Brody	X						
Lolla	X						
Maudsley		X					
Peterson		X					
Schwartz	X						
Wissinger	X						
<b>Total:</b>	4	5					

By Luba Annenko 5-17-00  
Robyn M. Hill  
Chief Counsel