

3
SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-119
District Docket No. XII-06-024E

IN THE MATTER OF
DEBORAH A. PIERCE
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: July 19, 2007

Decided: August 30, 2007

Kenneth Rotter appeared on behalf of the District XX Ethics Committee.

Respondent did not appear, despite proper notice.¹

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

¹ Office of Board Counsel's (OBC) efforts to serve respondent at her last known addresses were unsuccessful. Similarly, OBC's numerous attempts to reach her by phone were unavailing. Although respondent's answering machine identified the number as being hers, OBC's several messages for a return call were ignored. OBC then served respondent by publishing notices in The New Jersey Lawyer, The New Jersey Law Journal, and The Star Ledger.

This matter was before us on a recommendation for discipline (three-month suspension), filed by the District XII Ethics Committee (DEC). It was previously before us on March 16, 2006, as a default. Because respondent filed a persuasive motion to vacate the default, we granted the motion and remanded the matter to the DEC for a hearing. In her answer to the complaint, respondent waived appearance at the DEC hearing. Under R. 1:20-6(c)(2)(D), however, a respondent is prohibited from waiving appearance at the district ethics committee level.

The March 30, 2005 complaint charged respondent with violating RPC 8.4, presumably (c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 1.3 (lack of diligence), RPC 1.4, presumably (a), the paragraph in effect at the time (failure to keep a client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information), RPC 1.5, presumably (a) (charging an unreasonable fee), and RPC 1.16, presumably (d) (failure to protect a client's interests upon termination of the representation). The charges stemmed from respondent's acceptance of a fee in a contested will matter, after which she rendered no legal services on the client's behalf.

At the hearing below, the presenter moved to amend the charges to include a violation of RPC 8.1(b) (failure to cooperate

with disciplinary authorities), presumably based on respondent's failure to cooperate with the ethics investigation and/or failure to appear at the hearing. The DEC denied the motion.

For the reasons detailed below, we determine to suspend respondent for one year. The suspension should start at the end of her temporary suspension currently in effect.

Respondent was admitted to the New Jersey bar in 1994. At the relevant times, she maintained a law office in Vauxhall, New Jersey.

In 2003, respondent was reprimanded for gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to communicate in writing the basis or rate of the fee, and failure to cooperate with disciplinary authorities. Respondent's misconduct encompassed three client matters. In re Pierce, 177 N.J. 502 (2003). She was again reprimanded, in 2004, for failure to reply to requests for information from a disciplinary authority and to appear at a district ethics committee hearing. In re Pierce, 181 N.J. 294 (2004).

On June 23, 2006, respondent was temporarily suspended for failure to comply with a determination of a fee arbitration committee, requiring her to refund a fee to Anna DeAngelo, the client who filed the grievance in the disciplinary matter now before us. In re Pierce, 187 N.J. 90 (2006). Respondent remains

suspended to date. On August 2, 2004, the fee arbitration committee referred respondent's conduct to the DEC, thereby precipitating the investigation that led to the filing of the formal ethics complaint in this matter.

The complaint provides some insight into respondent's recalcitrance in cooperating with the disciplinary system. Specifically, on September 3, 2004, the DEC sent a letter to respondent's address listed in the 2004 New Jersey Lawyers' Diary, 901 Valley Road, Vauxhall, New Jersey, asking for information about the grievance. Respondent did not reply to the DEC's letter.

On November 15, 2004, the DEC sent a second letter to the same address by certified mail, but, again, received no response. The complaint does not mention whether the certified mail was returned.

The DEC also attempted to telephone respondent at the number listed in the Lawyers' Diary. However, the individual who answered at that number did not know respondent or her whereabouts.

On February 4, 2005, the DEC sent certified letters to respondent at two addresses provided by the Office of Attorney Ethics (OAE): 201 E. 5th Street, Plainfield, New Jersey, and 301 Tower Street, Plainfield, New Jersey. The certified mail was returned as unclaimed.

The 2005 Lawyers' Diary did not contain a listing for respondent.

Eventually, the DEC was able to serve the complaint on respondent, as is evident from her filing an answer of sorts, dated May 12, 2006. At the DEC hearing, the presenter noted that respondent's answer showed her address as c/o Charisse Jones, 38 Brighton Terrace, Irvington, New Jersey 07111, and her telephone number as (908)364-0679.

On August 1, 2006, the DEC presenter sent a letter to the above address, by regular and certified mail, notifying respondent that he had attempted to reach her for more than one week, that his voice-mail messages to her had not been returned, and that it was imperative that she contact him to discuss pre-hearing procedures and the scheduled hearing date.

On October 10, 2006, the presenter sent another letter to the same address, again by certified and regular mail, forwarding a copy of discovery demands previously forwarded to respondent. Both the certified and the regular mail were returned as unclaimed. The presenter's November 13, 2006 notice of the scheduled hearing, too, was returned as unclaimed.

The presenter also left telephone messages at the above telephone number, on July 25 and November 3, 2006, stressing that it was essential that respondent contact him. The recorded

message on the answering machine identified the number as belonging to respondent. The message stated that the caller had reached "Debbie." On December 8, 2006, the presenter left another message on respondent's voice-mail, reminding her of the date, time, and place of the hearing, providing her with his name and telephone number and, again, stressing that it was "imperative" that she contact him about the hearing.

As of the date of the DEC hearing, the presenter's only contact with respondent had occurred when she, or someone on her behalf, had accepted his August 1, 2006 letter sent to the Irvington address, c/o Charisse Jones.

As stated above, OBC's numerous efforts to contact respondent also proved unsuccessful.

The facts that gave rise to this disciplinary matter are as follows.

The grievant, Anna DeAngelo, testified that she retained respondent in connection with a will contest, based on the recommendation of the executrix of the estate of which DeAngelo was a beneficiary.

During an initial telephone conversation with respondent, in the fall of 2001, respondent agreed to meet with DeAngelo at DeAngelo's house to discuss the complaint filed against the estate. Respondent, however, failed to appear at the appointed

time. DeAngelo, therefore, contacted the executrix, who communicated with respondent on DeAngelo's behalf.

Several weeks later, respondent telephoned DeAngelo to explain that she had missed their scheduled appointment because she had been hospitalized for "woman troubles." Although they scheduled a second appointment, respondent again failed to appear. Afterwards, respondent telephoned DeAngelo with the pretext that her absence and failure to telephone DeAngelo were due to a second hospitalization.

According to DeAngelo, during one of their telephone conversations, respondent asked her several questions, presumably about the will contest. Respondent informed her that a meeting was unnecessary and that she would keep in touch with DeAngelo.

Later, DeAngelo received a letter from respondent, requesting a \$2,500 fee. DeAngelo conferred with the executrix, who advised her to forward the fee to respondent, notwithstanding that the two had never personally met.

On December 2, 2001, DeAngelo forwarded a check to respondent. Thereafter, she had no further contact with respondent or received any correspondence from her. Respondent's inaction drove DeAngelo to retain new counsel.

Eventually, DeAngelo filed for fee arbitration. Respondent failed to participate in the fee arbitration proceeding, resulting in an award for the full refund of DeAngelo's fee. To date, respondent has not refunded DeAngelo's fee.

Attached to her purported answer, respondent appended a certification addressing the allegations of the complaint. In her certification, respondent stated that she has been unable to obtain either legal employment or "any meaningful employment in any other field" since 2001, after the first ethics grievances were filed against her.

Respondent claimed that she resided at 386 Tower Street, Vauxhall, New Jersey, from October 2002 through November 2005, an address that she had registered with the New Jersey Lawyers' Fund for Client Protection and the OAE since 2003.

Respondent claimed that she was not aware of the fee arbitration matter or underlying grievance until she received the complaint in November 2005; therefore, she was not afforded an opportunity to reply "at a time when all documentation supporting this Answer was readily available" to her. She also asserted that she stored all her files at her Vauxhall residence, until she was forced to leave her residence due to an abusive relationship. She maintained that she had recently

retrieved her files, including the De Angelo file. She did not provide any documents to support these claims.

As to the substance of DeAngelo's grievance, respondent asserted that she had explained "in detail the terms of a proposed agreement to provide legal services," and had sent DeAngelo a formal agreement for her review. She had requested twice that DeAngelo meet with her at her office. DeAngelo had been unable to do so either time and, instead, had asked respondent to come to her house. According to respondent, she had informed DeAngelo that she was unable to do so, and had agreed to conduct all of their conferences by telephone.

Respondent contended that her representation of DeAngelo ended in October 2002, when she was evicted from her office, and was, therefore, no longer eligible to practice law, pursuant to R. 1:21-1(a).²

According to respondent,

23. Many conversations transpired between me and Ms. De Angelo regarding her case. In addition to telephone calls initiated by me updating Ms. De Angelo of the progress of her case, Ms. De Angelo religiously initiated calls to me regarding same.

24. Correspondence was also forwarded to Ms. De Angelo documenting our telephone conversations, as well as the meetings and

² Presumably, respondent was referring to the requirement of maintaining a bona fide office.

correspondence transpiring among myself, the attorney for the executrix of the subject will, and the attorney representing the parties contesting same.

[A4¶23-A5¶24.]³

DeAngelo, in turn, denied that respondent had requested to meet her at respondent's office. According to DeAngelo, the meetings were to take place at her home. Moreover, contrary to respondent's assertion that her representation of DeAngelo ended in October 2002, DeAngelo testified that respondent never informed her that she was terminating the representation and that she had been evicted from her office. DeAngelo also disputed respondent's claims that the two had had "many" conversations about the will contest, and that respondent had sent her letters documenting their telephone conversations and respondent's meetings and correspondence with other attorneys in the case. According to DeAngelo, the only correspondence that she ever received from respondent related to her fee, with no explanation about the services that she would provide.

DeAngelo testified that, after she paid respondent's retainer, she heard nothing further from her. Other than telling DeAngelo that she was going to go to court, respondent never discussed her objectives with DeAngelo. In all, DeAngelo had

³ A denotes respondent's answer to the complaint.

three telephone conversations with respondent: the initial conversation, in October 2001, and two more conversations: one after each appointment that respondent missed, and then only to excuse her failure to appear. DeAngelo received no information from respondent about any action that respondent might have taken on her behalf.

As to respondent's failure to cooperate with the DEC investigation, the presenter referred to his letter asking for a complete copy of the DeAngelo file. Respondent did not comply with the presenter's request, even though she certified that she had located the file.

The DEC found that, after DeAngelo paid respondent a \$2,500 retainer, she agreed to meet with DeAngelo at her home in January 2002, but failed to keep the original or rescheduled appointments; failed to provide any services to DeAngelo; failed to reply to DeAngelo's requests for information about the case; failed to terminate the representation; failed to refund DeAngelo's retainer; and also failed to appear at the DEC hearing. The DEC noted that R. 1:20-6(c)(2)(D) provides that a respondent's appearance at all hearings is mandatory, and that, under R. 1:20-7(1), a respondent's absence shall not delay the orderly processing of the case, provided that the respondent has been properly served.

The DEC determined that respondent's conduct violated RPC 8.4(c), RPC 1.3, RPC 1.4(a) and (b), RPC 1.5, and RPC 1.16. The DEC found "insufficient evidence to establish [the RPC 8.1(b)] charge by clear and convincing evidence," because the complaint did not give respondent notice that "such a charge would be determined at the hearing."

As noted earlier, the DEC recommended a three-month suspension, to be served when respondent is reinstated from her temporary suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical was fully supported by clear and convincing evidence. Unlike the DEC, however, we find that respondent violated RPC 8.1(b).⁴

Indeed, from the outset, respondent failed to notify disciplinary authorities of her correct address. The DEC's initial attempts to serve her at the address listed in the Lawyers' Diary were unsuccessful. Thereafter, once she was located and properly served with the complaint, which she eventually answered, she provided the DEC with an address and telephone number at which she could not be, or refused to be,

⁴ Although this RPC is not cited in the complaint, we deem the complaint amended to conform to the evidence. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

reached. She failed to reply to the presenter's discovery requests, failed to comply with requests that she contact the DEC about the hearing, and waived appearance at the DEC hearing, a waiver prohibited under R. 1:20-6(c)(2)(D). Unquestionably, thus, she did not cooperate with disciplinary authorities in the processing of this matter.

As to DeAngelo's representation, respondent took no action on her behalf, forcing her to retain new counsel. Respondent's inaction constituted lack of diligence, as well as gross neglect, violations of RPC 1.3 and RPC 1.1(a). It is clear from DeAngelo's testimony that respondent did nothing to advance her interests. Again, although the complaint did not allege a violation of RPC 1.1(a), we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

In addition, respondent failed to communicate with DeAngelo. Her only correspondence to DeAngelo was the fee agreement. After DeAngelo sent her a check for her fee, DeAngelo never heard from respondent again.

Furthermore, respondent accepted a fee but performed no services. She did not refund the retainer to DeAngelo, even after the district fee ethics committee directed her to do so and after the Court temporarily suspended her for failure to

comply with that committee's determination. In this regard, respondent's conduct more properly violated RPC 1.16(d), which requires the refund of any unearned fee, rather than RPC 1.5(a), as charged in the complaint.

Respondent's conduct further violated RPC 1.16(d) when she unilaterally determined, with no notice to DeAngelo, that she no longer would be representing her. Here, respondent's conduct was tantamount to abandonment of her client's interests.

On the other hand, the record does not sufficiently establish that respondent violated RPC 8.4(c). Presumably, the DEC's finding of a violation of that rule was based on the fact that respondent collected a fee from DeAngelo and subsequently performed no work on her behalf. That conduct, however, is more properly a violation of RPC 1.16(d), which requires an attorney to refund any unearned fees to the client.

Altogether, respondent's conduct violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.16(d), and RPC 8.1(b).

Respondent's most serious violation was the abandonment of her client. Such conduct almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, or the attorney's disciplinary history. See In re Nwaka, 178 N.J. 483 (2004) (three-month suspension, on a motion for reciprocal

discipline, for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities by not filing an answer to the complaint and not complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Hoffman, 163 N.J. 4 (2000) (three-month suspension in a default matter in which the attorney closed his office without notifying four clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination of representation, and failure to cooperate with disciplinary authorities; the attorney had a prior reprimand and a three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for abandonment of one client and failure to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests

upon termination of representation, and misrepresenting the status of a matter to a client; prior private reprimand); In re Bock, 128 N.J. 270 (1992) (six-month suspension for 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); In re Diamond, 185 N.J. 171 (2005) (one-year suspension for attorney who, in three matters involving two clients, abandoned the clients and engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to promptly deliver funds to a client or third person, failure to withdraw from the representation where the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client, and failure to reply to requests for information from a disciplinary authority; the attorney failed to appear at the continuation of the DEC hearing; he suffered from alcohol and drug abuse and had a prior admonition and reprimand); In re Bowman 178 N.J. 25 (2003) (one-year suspension, in a default matter, for attorney who abandoned four clients; other violations included gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests on unilateral termination of representations, communicating about the subject of the

representation with a person the lawyer knew or should have known to be represented by another lawyer in the matter, failure to adopt and maintain reasonable efforts to ensure that the conduct of non-lawyer employee is compatible with the professional obligations of the attorney, failure to properly supervise non-lawyer employee, failure to cooperate with disciplinary authorities, and misrepresentation of the status of a matter; the attorney's ethics history included a private reprimand, a temporary suspension, and two six-month suspensions); In re Greenawalt, 171 N.J. 472 (2002) (one-year suspension, in a default matter, for attorney who grossly neglected three matters, abandoned his law practice, failed to notify clients of a prior suspension, and failed to cooperate with disciplinary authorities; the attorney had been temporarily suspended for failure to cooperate during the ethics investigation); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for attorney who abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities). But see In re Hughes, 183 N.J. 473 (2005) (reprimand for attorney who abandoned one client by closing his practice without informing the client or advising her to seek other counsel; altogether, the attorney mishandled three matters by exhibiting

a lack of diligence, failure to communicate with clients, and failure to protect his clients' interests upon termination of the representation; strong mitigating factors considered).

We note, significantly, that this is not the first time that respondent has faced ethics inquiries as a result of making herself inaccessible to clients, as well to the courts and the disciplinary system. In her 2004 disciplinary matter, she claimed that she could not attend the DEC hearing because she had no transportation. In addition, she did not notify her clients that she had moved her office location. For instance, she did not specifically inform the Public Defender's Office (PDO), for whom she had been working as a pool attorney, of her change of address. She merely forwarded certain documents to that office, showing her new address. The PDO and the courts were confused about her office location. The PDO had assigned her a case, which, presumably, had been sent to her old address. As a result, she missed certain filing deadlines and court appearances.

Because the record in the 2004 matter was silent as to when the PDO and the courts had learned of respondent's new address, she was spared from a finding of improperly representing the PDO client. Instead, she was found guilty only of failure to reply to requests for information from a disciplinary authority. In re Pierce, supra, 181 N.J. 294 (2004).

The remaining question is the right extent of discipline for respondent's ethics infractions, viewed in the context of her disciplinary record and her troubling indifference toward the disciplinary system as a whole.

For abandoning DeAngelo's case alone respondent should receive a short-term suspension. When we take into account her prior two reprimands and, more seriously, her continuing disregard for her duty to cooperate with disciplinary authorities, we conclude that a one-year suspension is warranted. The suspension should start from the time that respondent is reinstated from her temporary suspension for failure to refund DeAngelo's fee.

Vice-Chairman Pashman and Members Boylan and Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

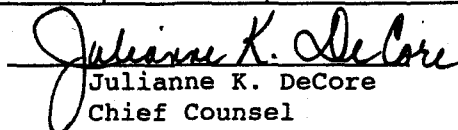
In the Matter of Deborah A. Pierce
Docket No. DRB 07-119

Argued: July 19, 2007

Decided: August 30, 2007

Disposition: One-year suspension

Members	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman					X
Baugh					X
Boylan					X
Frost	X				
Lolla	X				
Neuwirth	X				
Stanton	X				
Wissinger	X				
Total:	6				3


Julianne K. DeCore
Chief Counsel