

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-301
District Docket No. XIV-2007-0568E

IN THE MATTER OF
PAULINE E. SICA
AN ATTORNEY AT LAW

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Decision

Decided: March 26, 2015

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

This matter was before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). A three-count complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with reasonable requests for information from a disciplinary authority), RPC 8.4(b) (commission of a criminal act), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons expressed below, we determine that a one-year suspension is the appropriate discipline.

Respondent was admitted to the New Jersey bar in 1993. At the relevant time, she maintained a law office in Jersey City, New Jersey. Although she has no history of discipline, she was temporarily suspended, effective March 12, 2014, for failure to cooperate with the OAE's investigation of this matter. In re Sica, 217 N.J. 128 (2014). The New Jersey Lawyers' Fund for Client Protection report shows that she has been retired since 2008.

Service of process was proper in this matter. On June 27, 2014, the OAE sent a copy of the complaint to respondent's counsel, Lee Gronikowski, by regular and certified mail. In a July 2, 2014 facsimile transmission, Gronikowski notified the OAE that he would not accept service of the complaint on respondent's behalf and that his client should be served at her address in Florida. By letter dated July 3, 2014, Gronikowski confirmed that he would not accept service of the complaint on respondent's behalf.

On July 9, 2014, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's last known home address, listed in the attorney registration records. The certified mail receipt, signed by respondent, indicated delivery on July 11, 2014. The regular mail was not returned.

On August 5, 2014, OAE First Assistant Ethics Counsel Michael Sweeney notified Gronikowski that, among other things, respondent's answer was overdue and that, if she failed to file an answer within five days of the date of the letter, the complaint would be deemed amended to include an additional violation of RPC 8.1(b).

By letter dated August 9, 2014, Gronikowski stated that his client would allow the *status quo* to continue; that the OAE could prosecute the case, as in similar cases; that respondent was a domiciliary of Florida; that she was unable to travel to New Jersey to litigate the matter; and that she was fully retired and did not intend to practice law again.

By letter dated August 12, 2014, Sweeney informed Gronikowski that a certification of default would not be filed until after August 25, 2014 and that, if his client needed more time to file an answer, she should contact the OAE for an extension. Respondent did not request an extension.

As of the date of the certification of the record, September 23, 2014, no answer had been filed on respondent's behalf. On December 4, 2014, Gronikowski withdrew as respondent's counsel.

We now turn to the facts of this case. At the relevant time, from July 7, 2005 to April 28, 2008, respondent shared office space with attorney Victor Sison (Sison), a sole practitioner. Respondent's name appeared on Sison's letterhead

and her attorney registration listed her as "of counsel" to Sison. Sison paid her \$250 to \$350 per court appearance. Respondent used Sison's trust account for her legal matters.

Respondent was a municipal court judge in Jersey City until 2007. Sison was also a municipal court judge at the time.

On October 24, 2007, the New Jersey Office of the Attorney General (AG) notified the OAE of charges filed against respondent for "ticket-fixing" and later provided the OAE with a copy of the complaint, charging her with the second-degree crime of Official Misconduct, N.J.S.A. 2C:30-2(a).

On August 28, 2009, respondent was admitted into the Pre-Trial Intervention (PTI) program, which she successfully completed.

Count one of the complaint alleged that Sison presented respondent with three motor vehicle tickets "for adjudication." The tickets had been issued to him and to members of his family. Respondent did not adjudicate the tickets on the record. Instead, she imposed judgment without the defendants' appearances or pleas and without considering their guilt or innocence. She either found the defendants guilty or dismissed their matters.

For Sison's ticket for parking during street cleaning, respondent assessed \$20 in court costs and waived the \$42 fine.

She conceded, during the AG's investigation, that "there probably was no legitimate reason to waive the fine; that's the culture."

A second ticket charged Sison or his wife with the same offense, for which respondent assessed \$10 in court costs and waived the \$42 fine.

A third ticket, issued to Karl Sison, charged him with a moving violation for failure to observe a traffic control device, a two-point violation. Respondent amended the ticket to delaying traffic, a no-point violation, and imposed a \$25 fine and \$25 court costs. She advised Sison of the amended charge and fines.

Although Karl Sison had been standing in the hallway, while respondent adjudicated his ticket, she did not elicit a factual basis for the amended charge and did not give the municipal prosecutor or charging officer an opportunity to be heard about the charges.

Respondent knew that her actions were not authorized. On August 28, 2009, prior to her admission into PTI, she told the judge the following:

I served as a Municipal Judge in Jersey City. I handled three traffic ticket cases in which the traffic tickets were issued to a fellow judge of the Jersey City Municipal Court and family member of a Jersey City Municipal Court Judge.

I realize that this presented a conflict, and I should have either recused myself from the case or transferred the case to another jurisdiction.

[C¶49.]¹

The complaint alleged that respondent had a "professional and legal relationship with Sison;" her actions provided a pecuniary benefit to Sison and his family members; as a result, a clear conflict occurred, when she presided over Sison's and his family's matters; and, pursuant to R. 1:12-1(g),² she should have recused herself from the matters.

The complaint charged respondent with violations of RPC 8.4(d) and R. 1:12-1, for failing to recuse herself from the matter with Sison, with whom she had a professional relationship, and "which clearly prevented a fair and impartial hearing;" a second instance of violating RPC 8.4(d), for favorably disposing of traffic tickets on behalf of Sison and

¹ C refers to the ethics complaint, dated June 24, 2014.

² This section provides:

The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter . . . when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

his family; and RPC 8.4(b), for committing a criminal act, in violation of N.J.S.A. 2C:30-2(a).

Count two alleged that respondent failed to notify the OAE that, in October 2007, the AG had filed the second-degree charge of Official Misconduct against her and that she had been admitted into PTI on August 28, 2009.

In a January 6, 2014 letter to Gronikowski, the OAE asked respondent to produce a writing demonstrating that she had fulfilled her obligation under R. 1:20-13(a)(1)³ or to explain her failure to comply with the rule. Respondent neither produced the requested writing nor explained why she had failed to notify the OAE of the criminal charge.

The complaint alleged that respondent's failure to notify the OAE of the criminal charges or of the disposition of the charges violated RPC 8.1(b), RPC 8.4(c) (misrepresentation by omission), RPC 8.4(d), and R. 1:20-13(a)(1).

Count three detailed the extensive efforts and concessions that the OAE made to obtain respondent's reply to the grievance. Two attorneys, John Fahy and Gronikowski, submitted non-

³ This rule requires an attorney who has been "charged with an indictable offense" in this state or any other state to promptly inform the OAE Director, in writing, of the charges and, thereafter, to promptly inform the Director of the disposition of the matter.

responsive replies to the grievance, on April 15, 2013 and August 9, 2014, respectively, stating merely that respondent had moved and retired from the practice of law. The OAE granted extensions and adjournments of a scheduled telephone interview, to which respondent had initially agreed. In the end, respondent failed to provide a detailed written reply to the grievance and failed to appear for a demand interview, either in person or by telephone. As noted previously, the Supreme Court temporarily suspended respondent, on March 12, 2014, for such failure.

The complaint charged respondent with violating RPC 8.1(b), for failing to cooperate with the ethics investigation.

By letter to Sweeney, dated October 1, 2014, respondent, among other things, accused Disciplinary Review Board Member Gallipoli of "Javert-like madness," in ensuring her prosecution, and questioned why charges against Sison had not been pursued.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent improperly adjudicated three traffic tickets, to which financial and non-financial consequences attached. The tickets had been issued to a fellow judge and to his immediate

family members. In so doing, respondent violated N.J.S.A. 2C:30-2(a), which provides:

A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

- a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner

Respondent's conduct in this regard violated RPC 8.4(b), RPC 8.4(c)⁴ and RPC 8.4(d). Respondent, a municipal court judge, unlawfully "fixed" three traffic tickets issued to her fellow municipal court judge, for whom she performed per diem work, and to his family.

The complaint further charged that respondent's failure to notify the OAE of the criminal charges against her violated RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d). To date, the failure to report such a charge, which often occurs in motions for final discipline, has never been found to be a separate RPC violation. Rather, we view it as an aggravating factor that ordinarily increases the appropriate level of discipline. On the other hand, respondent's failure to reply to the OAE's inquiries as to

⁴ RPC 8.4(c) was charged in count two only.

why she had not notified that office of the AG's charge constituted a violation of RPC 8.1(b).

Finally, the complaint charged respondent with having violated RPC 8.1(b) for failure to cooperate with the OAE's investigation. The allegations in the complaint and attached documentation clearly and convincingly support such a violation. Rather than reply to the OAE's inquiries or make herself available for a telephone interview, respondent authorized her counsel to reply that she had moved and was retired from the practice of law.

The only issue left for consideration is the proper quantum of discipline for respondent's wrongdoing.

In a recent ticket-fixing case, In re Molina, 216 N.J. 551 (2014), the attorney, who was the chief judge of the Jersey City Municipal Court, received a six-month suspension for adjudicating nine parking tickets that had been issued to her significant other. Molina entered a guilty plea to the third-degree crime of tampering with public records or information and the fourth-degree crime of falsifying records. Molina either dismissed the tickets outright or wrote "Emergency" on them and then dismissed them, knowing that no emergency had existed. The purpose of her actions was to avoid her significant other's payment of fines to the city. Molina conceded that, as the chief

judge, she should either have requested a change of venue, because of the conflict, or ensured that the tickets were paid.

Molina presented significant mitigation, at her sentencing hearing and before us: she deeply regretted the incident, for which she expressed embarrassment; she served her community and helped women and minorities for the majority of her life; she intended to compensate the city for the improperly dismissed tickets; she had no criminal history; her conduct was unlikely to recur; she resigned from her position as chief judge; she cooperated with law enforcement; she accepted responsibility for her conduct; she submitted eighteen character letters on her behalf; and she apologized publicly for her conduct.

The sentencing judge in Molina noted that judges should be held to the highest standards to maintain the integrity of the judicial system and the public's faith in the system. When imposing sentence, the judge also considered the need to deter Molina and others from engaging in similar conduct.

Molina was sentenced to three years' probation, "364 [days] in the Bergen County Jail as a reverse split," ordered to perform 500 hours of community service, prohibited from holding public employment, and directed to pay restitution and penalties.

Unlike Molina, who presented compelling mitigating factors, respondent advanced none. For instance, she showed no contrition or remorse for her acts. During the criminal investigation against her, she stated that, while there was no legitimate reason to waive the fine, "that's the culture." Furthermore, her letter to the OAE did not acknowledge any wrongdoing on her part, but implied that she had been pursued unfairly, since no action had been taken against Sison. She also failed to notify the OAE of the criminal charges that had been filed against her. Moreover, it may be inferred that respondent's conduct was aimed at self-benefit, in the sense that she disposed of three tickets for her employer, with whom she wished to maintain a professional relationship.

In addition to the foregoing, respondent did not provide the OAE with a reply to the grievance and then permitted this matter to proceed as a default by not filing an answer to the complaint: "[A] respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).


Comparing respondent's conduct to Molina's, we conclude that the aggravating factors, which include the default nature

of these proceedings, warrant harsher discipliner than the six-month suspension imposed in Molina. We, therefore, determine to impose a one-year suspension on respondent, retroactive to March 12, 2014, the effective date of her temporary suspension.

Member Gallipoli recused himself. Member Rivera 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
Bonnie C. Frost, Chair

By: 
Eileen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Pauline E. Sica
Docket No. DRB 14-301

Decided: March 26, 2015

Disposition: One-year retroactive suspension

Members	Disbar	One-year Retroactive Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli					X	
Hoberman		X				
Rivera						X
Singer		X				
Zmirich		X				
Total:		6			1	1


Ellen A. Brodsky
Chief Counsel