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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-286
District Docket Nos. VA-04-008E

IN THE MATTER OF
CAROLYN E. ARCH
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)]

Decided: December 27, 2005

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).

Respondent was admitted to the New Jersey bar in 1965.
On July 9, 1991, she received a private reprimand for gross
neglect, lack of diligence, failure to communicate with the
client, and failure to withdraw from the representation when
requested to do so by the client. In 2002, she received an
admonition for failure to communicate with the client in a
workers' compensation matter, a violation of RPC 1.4(a) and

RPC 1.4(b). In the Matter of Carolyn E. Arch, Docket No. DRB 02-188 (July 24, 2002). That same year, she received an admonition for lack of diligence and failure to communicate with the client in a divorce action. In the Matter of Carolyn E. Arch, Docket No. DRB 01-322 (July 29, 2002). On January 5, 2004, respondent was suspended for three months (DRB 03-114), effective February 5, 2004, for lack of diligence, negligent misappropriation of client funds, failure to maintain required records under R. 1:21-6), and knowingly making a false statement of material fact to ethics authorities; respondent failed to appear before the Court on the return date of its order to show cause, sought and received two extensions of time to file a brief, and thereafter failed to file the brief. In re Arch, 178 N.J. 263 (2004). On September 21, 2004, respondent received a three-month suspension (DRB 04-020), to run concurrently with the suspension in DRB 03-114, for failure to communicate with the client, negligent misappropriation of client funds, and failure to comply with the recordkeeping rules. In re Arch, 181 N.J. 325 (2004). She remains suspended to date.

As stated above, on January 5, 2004, the Court suspended respondent from the practice of law for various

ethics infractions. At the time, respondent was served with a copy of the Court's order, under which her suspension became effective one month later, on February 5, 2004.

Count one of the formal ethics complaint in this matter alleged that, on February 6, 2005, the second day of respondent's suspension, she made an appearance in Hudson County Superior Court on behalf of her client, Debra Linn, in the matter captioned Barry F. Zotkow, Esq. v. Debra A. Linn. Respondent presented herself to the court as "Carolyn Arch, for the firm of Arch and Goodwin, representing the defendant." Thereafter, respondent argued at length for the court to vacate a default judgment previously entered against her client.

The first count of the complaint alleged violations of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 5.5(a) (practicing law while suspended).

The first count also alleged that respondent failed to cooperate with ethics investigators. On April 14, 2004, the OAE forwarded a copy of the grievance in the within matter to respondent, but she did not reply to the grievance or turn over her client file by the required date of May 10, 2004.

On May 18, 2004, respondent replied to the grievance by a one-sentence letter to the OAE stating, "pursuant to my 9 May 2004 letter, the boxed original client file in *Zotkow v. Linn*, HUD-L-4410-01, will be given to a courier for delivery to you on Monday, 24 May 2004."

The OAE had no record of receiving a May 9, 2004 letter from respondent. Therefore, on May 20, 2004, that office sent respondent a letter (with copies of its prior correspondence) advising her that it had not yet received a reply to the grievance. The letter gave respondent a new deadline of June 1, 2004, and advised her that, if she failed to reply to the grievance, the OAE might move for her temporary suspension, or charge her with a violation of RPC 8.1(b).

On June 30, 2004, the OAE received respondent's original client file, but no reply.

Count two alleged a violation of RPC 8.1(b) (failure to cooperate with ethics authorities).

On March 10, 2005, the DEC sent respondent a copy of the complaint by both certified and regular mail, to her last known home address, 33 Parkview Terrace, Summit, New Jersey, 07901. The certified mail receipt was returned

signed by "Gwendolyn L. Arch," but not dated. The regular mail was not returned.

On April 21, 2005, the DEC sent respondent a "five-day letter" to the same address, notifying her that, unless she filed an answer within five days, the record would be certified directly to us for the imposition of discipline. The certified mail was returned marked "unclaimed." The regular mail was not returned.

Respondent did not file an answer to the complaint.

Prior to our November 17, 2005 consideration of this default matter, respondent filed with us a "certified motion to vacate default," dated November 3, 2005.

In order to vacate default matters, a respondent must overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his/her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges.

As to her failure to file an answer, respondent claims that she was not served with the complaint, although the DEC sent it to her on March 10, 2005, by both certified and regular mail, to her home address, as stated above.

In her motion, respondent acknowledges receipt of our October 5, 2005 letter notifying her of the default

proceedings. That letter was sent to the same address (33 Parkview Terrace) as that used by the DEC for both the complaint and the five-day letter. Respondent asserts that she happened upon our October 5, 2005 correspondence on November 3, 2005, "in with the junk mail piles being readied for recycling."

Respondent blames her "disabled sister-in-law whose disability is manic depression, and [who] becomes confused when she is off her medication," for misplacing our October 5, 2005 letter.¹

Respondent has given no explanation, however, for her failure to receive and reply to the copies of the complaint and five-day letter received by regular mail. She does not state that her sister-in-law was responsible for their disappearance, or that someone spirited away all other correspondence from ethics authorities, including us, delivered to respondent between March and October 2005.

We find that respondent did, in fact, receive the complaint on two occasions. She received it by certified mail - the mail that the sister-in-law may have mishandled. She also received the complaint by regular mail. In

¹ The certified mail receipt for our letter was signed by "Gwendolyn Lee," presumably the same person who signed for the complaint as "Gwendolyn L. Arch."

addition, respondent received from ethics authorities other correspondence related to this matter, none of which generated enough interest with this respondent to spur a timely reply.

Moreover, this is not respondent's first go-around with the disciplinary system. She has to know that any correspondence from the disciplinary system is critical to review and deserving of a reply. Having failed to furnish a reasonable explanation for her failure to file an answer to the complaint, we determine to deny respondent's motion to vacate the default.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations are deemed admitted. R. 1:20-4(f).

Respondent was notified of her suspension contemporaneously with the Court's January 5, 2004 Order, which was filed with the Supreme Court Clerk on January 8, 2004. The suspension was effective February 5, 2004, giving respondent almost a full month to advise her client to make other arrangements for the upcoming court appearance. Instead, respondent elected to practice law on the second

day of her suspension. In so doing, she violated the suspension Order, as well as RPC 8.4(d)² and RPC 5.5(a).

In addition, although respondent initially indicated to the OAE that she would comply with that office's requests for information, she ultimately allowed the matter to proceed to us on a default basis, thereby violating RPC 8.1(b).

The level of discipline for practicing law while suspended has ranged from a one-year suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with disciplinary authorities, other mitigating factors, the presence of other misconduct, and the attorney's disciplinary history. See In re Lisa, 158 N.J. 5 (1999) (attorney appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did

² Although the complaint cited RPC 3.4(d), RPC 8.4(d) (conduct prejudicial to the administration of justice) is the more appropriate rule.

not charge his friend for the representation); In re Wheeler, 140 N.J. 321 (1995) (attorney suspended for two years for practicing law while suspended, making multiple misrepresentations to clients, displaying gross neglect and a pattern of neglect, and engaging in conduct that involved negligent misappropriation, conflict of interest, and failure to cooperate with disciplinary authorities); In re Cubberley, 178 N.J. 101 (2003 (three-year suspension for attorney who solicited and continued to accept fees from a client after being suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to comply with R. 1:20-20(a), and failed to cooperate with ethics authorities; the attorney also had a significant disciplinary history); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension where the attorney continued to practice law after the Court denied her request for a stay of her suspension; the attorney also failed to keep complete trust records and failed to advise her adversary of the location and amount of escrow funds); In re Beltre, 130 N.J. 437 (1992) (attorney suspended for three years for appearing in court after having been suspended and misrepresenting his status to the judge, failing to carry

out his responsibilities as an escrow agent, lying to the Disciplinary Review Board about maintaining a bona fide office, and failing to cooperate with an ethics investigation); In re Dupre, 183 N.J. 2 (2005) (five-year suspension imposed for practicing law while suspended, gross neglect, lack of diligence, failure to communicate with the client, failure to use written fee agreement, failure to protect client's interests on termination of representation, failure to cooperate with ethics authorities, conduct involving dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice; the attorney failed to appear on the return date of the Court's order to show cause); In re Costanzo, 128 N.J. 108 (1992) (disbarment for practicing law while suspended, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to commit rate or basis for fee to writing); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended and in violation of an agreement with disciplinary authorities to limit his practice to criminal matters).


This respondent's ethics offenses are aggravated by her significant disciplinary history, which took a major turn

for the worse in 2002. In the following two years, her misconduct changed from fairly innocuous recordkeeping and diligence violations to two separate three-month suspensions for behavior that included lack of diligence, failure to communicate with clients, negligent misappropriation of client funds, failure to maintain proper trust and business account records, and misrepresentation to ethics investigators.

Thereafter, respondent failed to appear for the Court's 2004 order to show cause in the suspension matters, and has now allowed this matter to proceed to us as a default. Respondent has not only engaged in the practice of law while suspended, but she continues to ignore inquiries from disciplinary authorities about her serious misconduct. Respondent's disdain for the disciplinary system is clear and unrelenting. Although, in our view, disbarment is too severe a sanction in this matter, under the above circumstances, we determine that a lengthy suspension - of three-year duration - is appropriate for respondent's serious ethics violations. Members Pashman and Holmes voted to grant the motion to vacate default. Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

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

Disciplinary Review Board
Louis Pashman, Esq.

By:  for
Julianne K. DeCore
Chief Counsel


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

In the Matter of Carolyn E. Arch
Docket No. DRB 05-286

Decided: December 27, 2005

Disposition: Three-year suspension

Members	Three-year Suspension	Remand/Vacate	Admonition	Disqualified	Did not participate
Maudsley					X
O'Shaughnessy					X
Boylan	X				
Holmes		X			
Lolla	X				
Neuwirth	X				
Pashman		X			
Stanton	X				
Wissinger	X				
Total:	5	2			2


Julianne K. DeCore
Chief Counsel