SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-213

IN THE MATTER OF

ADELE STALCUP,

AN ATTORNEY AT LAW

Decision

Argued: July 23, 1998

Decided: December 17, 1998

William W. Shultz appeared on behalf of the District I Ethics Committee.

Dana Pirone Garrity appeared on behalf of respondent.

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 I Ethics Committee ("DEC") in two matters. In District Docket No. I-96-16E, an amended complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect), RPC 1.5(c) (failure to provide a written fee agreement), RPC 1.16(a) (refusal to withdraw from representation after discharged by client), RPC 1.16(d) (failure to surrender papers to which client is entitled), RPC 3.2(failure to expedite litigation), RPC 8.4(c) (conduct

involving dishonesty, fraud, deceit or misrepresentation) and R.1:21-7A (failure to provide a written retainer agreement in a family action) (count one). The complaint also charged respondent with a violation of RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority) (count two). These charges stemmed from respondent's handling of a matrimonial matter.

In the second matter, District Docket No. I-97-008E, respondent entered into a stipulation of facts and admitted violations of RPC 1.3 (failure to act with reasonable diligence), RPC 1.4 (failure to communicate with client), RPC 1.5(failure to provide written retainer agreement), RPC 3.2 (failure to expedite litigation), RPC 8.4 (conduct involving misrepresentations) and RPC 8.1(b) and R. 1:20-3(g) (3) (failure to cooperate with a disciplinary authority).

Respondent was admitted to the New Jersey bar in 1980. At the relevant times she maintained a law practice in Penns Grove, New Jersey.

Respondent has a significant history of discipline. In 1997, she was suspended for a three-month period for failure to communicate with her client, failure to reduce a fee agreement to writing and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Stalcup, 147 N.J. 335 (1997). Respondent has not applied for reinstatement for the reasons stated below. Respondent was also suspended in 1996 for failure to comply with a fee arbitration determination. In re Stalcup, 146 N.J. 63 (1996). She received a reprimand in 1995 for gross neglect, failure to perfect an appeal and to so inform her client and failure to withdraw from representation when her services were terminated. In re Stalcup, 140 N.J. 622 (1995).

District Docket No. I-96-16E

Jacquelynn VanAtta, the grievant, was served with a divorce complaint in June 1992. Although VanAtta did not wish to contest the divorce, she was concerned about the significant amount of debt that she and her husband had incurred during their marriage. Prior to their marriage, VanAtta and her ex-husband, Malcolm (a/k/a Larry), had started a disc jockey business together known as "Sha-Bang." Because Malcolm had a poor credit rating, all business loans and expenses had been made in VanAtta's name.

Shortly after being served with the complaint, VanAtta contacted respondent to discuss the possibility of filing for bankruptcy. According to VanAtta, respondent dissuaded her from filing for bankruptcy, explaining that it would ruin her credit history for a number of years. Respondent recommended that she seek equitable distribution of the marital assets and debts. At the time, VanAtta was not aware that respondent did not practice bankruptcy law.

After her initial meeting with respondent, VanAtta believed that respondent was representing her. When VanAtta informed respondent that she did not have any money, respondent told her not to worry. Respondent added that VanAtta needed to pay only the filing fee of $500 in order to file an answer to the divorce complaint. Respondent told VanAtta that she would seek to have Malcolm pay the attorney's fees through the court proceedings. VanAtta did not receive a written retainer agreement from respondent.

According to VanAtta she understood that respondent would be contacting Ross Levitsky, Malcolm's attorney, to seek an extension of time to file an answer. It was

VanAtta's understanding that Levitsky had, in fact, granted the extension. VanAtta testified that several weeks later, however, she received a letter from Levitsky, dated July 29, 1992, informing her of a default hearing scheduled for August 1, 1992. Respondent received a copy of the letter. VanAtta then contacted respondent to determine what had happened. According to VanAtta, respondent feigned surprise and told VanAtta she had filed an answer to the complaint. That was untrue. Respondent had not filed an answer or entered an appearance, even though Levitsky had agreed to grant respondent an additional twenty-day extension to file an answer. This extension was confirmed both in a telephone conversation and by Levitsky's letter to respondent dated June 19, 1992.

Neither VanAtta nor respondent appeared at the hearing, which proceeded as uncontested. A judgment was entered on August 11, 1992, dissolving the marriage.

Thereafter, Levitsky forwarded a copy of the judgment of divorce directly to VanAtta, who, in turn, called respondent to inquire about the situation. According to VanAtta, respondent claimed no knowledge of what had happened and assured VanAtta that she would file a motion to either vacate or to modify or amend the final judgment of divorce. VanAtta testified that she trusted respondent to proceed with the suggested course of action.

Respondent filed a motion on or about September 16, 1992. Attached to the motion was respondent's supporting certification, which stated as follows:

> On June 12, 1992 I initially met with Jacquelynn M. Van Atta to discuss responding to a divorce complaint with which she had been served and due to the voluminous information which we needed to compile and utilize in the response I requested an additional thirty days to file the answer and my request was acknowledged by letter dated June 19, 1992 from Ross Levitsky, Esquire,

attorney for Plaintiff except that he consented to a twenty day extension which would have made the answer due on July 14, 1992.
[Exhibit C-5]

Respondent's certification also stated that she had discussed the matter with Levitsky while both were in court, when she had informed him that she would be filing an answer the week of July 29, 1992; at that time Levitsky had told her that he had already started to file "something" because VanAtta's answer had not been filed.

Respondent's motion was granted in part. Although the dissolution of the marriage stood, the court permitted VanAtta to pursue the issue of equitable distribution. A discovery schedule was set and a plenary hearing was scheduled for December 23, 1992. The equitable distribution issue was to center around certain debts incurred by Malcolm, his failure to disclose the existing marital assets and the value of their business, "Sha-Bang."

Following the court's order modifying the final judgment of divorce, the matter was adjourned periodically and management discovery orders were entered. Respondent failed to abide by the discovery schedule set by the court. On September 29, 1993, the court entered a specific discovery order requiring respondent to produce all documents demanded by opposing counsel. When respondent failed to produce the documents on January 14, 1994, the court dismissed, with prejudice, VanAtta's application for the apportionment of the marital debts. The court also limited expert testimony at trial to the value of the business assets, instead of the value of the business as an ongoing concern.

Respondent did not communicate the full substance of the court's order to VanAtta. Respondent then filed a motion for leave to file an interlocutory appeal, which was denied.

According to VanAtta, though, respondent had told her, following oral argument on the motion, "that everything had gone alright."

At the next scheduled hearing date, respondent subpoenaed a number of witnesses to testify about the issues barred by the January 14, 1994 court order. After the court barred the witnesses' testimony, VanAtta questioned respondent about the court's rulings. According to VanAtta, respondent's incredible explanation was that the judge was "gay" and that he must have taken a liking to Malcolm. At the DEC hearing, Charles Donelson, who had been subpoenaed to testify at the equitable distribution hearing, corroborated that he, too, had heard respondent make that comment. Immediately after that court hearing, VanAtta retained new counsel.

* * *

Prior to discharging respondent, VanAtta and her son had been involved in an automobile accident in Elsmere, Delaware. VanAtta discussed the car accident with respondent and understood that respondent would represent her in that matter. It was also VanAtta's understanding that, because she would recover money from the accident, respondent would realize a fee "down the line." There was no fee agreement signed in connection with that case.

When VanAtta became dissatisfied with respondent's representation in the equitable distribution matter, she decided to discharge respondent from the personal injury case as

well. She retained the law firm of Doroshow & Pasquale. Elaine Voyles represented VanAtta in the equitable distribution matter and Martin Siegel represented VanAtta and her son in the personal injury matter.

By letter dated July 28, 1994, Voyles advised respondent that she had been retained by VanAtta and requested a copy of VanAtta's file. Voyles enclosed a substitution of attorney form signed by VanAtta. Respondent did not reply to Voyles' request. According to Voyles, she followed up on the request two weeks later. By letter dated August 19, 1994, Voyles sent respondent a second substitution of attorney form because respondent had objected to the original form Voyles had prepared. Respondent did not sign that form either or return VanAtta's file. Eventually, in early September, Voyles and respondent met in court and agreed to work out the turnover of the files. It was not until late October 1994, three months after the initial request, that Voyles ultimately obtained the files from respondent.

At the DEC hearing, Voyles testified that the file did not contain a retainer agreement or any billing statements from respondent. Voyles eventually settled the equitable distribution matter and also filed a bankruptcy petition in behalf of VanAtta.

Martin Siegel also testified at the DEC hearing. He explained that he had been retained by VanAtta in July 1994. By letter dated July 27, 1994 he requested respondent to turn over VanAtta's personal injury file to him. The letter was hand-delivered to respondent on July 29, 1994. Siegel followed up the letter with a telephone call to respondent's office, in an attempt to determine when he would be able to obtain the file. Respondent's secretary

informed him that he would have to speak directly to respondent. Respondent never returned Siegel's telephone call.

On August 4, 1994, Siegel realized that he had only requested VanAtta's files and not her son's files. He, therefore, sent a second letter advising respondent that he was also representing VanAtta's son and was seeking his file as well. By letter dated August 11, 1994 respondent wrote to Siegel indicating that she had written to VanAtta to address the situation. Respondent informed Siegel that VanAtta was breaking various agreements with her and directed Siegel to contact VanAtta for further information. She did not agree to return the files in that letter.

Siegel replied to respondent's letters on August 15, 1994, again requesting that respondent return the personal injury files. On August 16, 1994 respondent wrote to Siegel, indicating that she wanted VanAtta to tell her exactly what she wanted turned over to Siegel. Respondent also requested that a proper substitution of attorney be filed with the court to release her from any responsibility in the matters. Respondent also wanted written assurances that the fees due to her would be protected. Eventually respondent turned over the files to Siegel. Those files, too, did not contain a retainer agreement.

Ultimately, Siegel was able to settle the personal injury matters. However, the insurance company would not release the proceeds because of respondent's involvement in the matter. Eventually, Siegel was able to obtain the proceeds by providing the insurer a copy of his fee agreement with VanAtta and her son. In a December 29, 1994 letter to the insurer, Siegel wrote that he had attempted on numerous occasions over the past several

months to obtain a copy of a fee agreement between respondent and his clients. He was unable to obtain such an agreement. Moreover, his clients had advised him that no such agreement had been prepared or entered.

Siegel also testified that he had informed respondent, in writing, that the insurance carrier was on notice that he was representing VanAtta and her son and that the insurer was to communicate with him only. Siegel instructed respondent that, if she wanted him to protect any fees or costs in the matter, she would be required to provide him with a copy of a fee agreement and with proof of costs advanced so that she could be reimbursed. Respondent never provided Siegel with such information.

Respondent was also charged with a violation of RPC 8.1(b). By letter dated January 23, 1995 respondent was requested to reply to the grievance. The DEC made a second request for a reply. Respondent failed to reply, causing the DEC to send another letter on June 8, 1995, asking for a response within two weeks. Respondent did not comply with that request. Ultimately, respondent filed an answer to the amended complaint, through her counsel.

For her part, respondent testified that VanAtta had consulted with her after she had been served with the divorce complaint. Respondent claimed that she could not "pin" VanAtta "down" as to what she wanted respondent to do in the matter. Respondent added that VanAtta was being harassed by her creditors, but was unable to decide whether she wanted to pursue equitable distribution issues, to file for bankruptcy or even to file an answer to the divorce complaint.

As to the letter that respondent received from Levitsky extending the time to file an answer, respondent claimed that she was surprised that he had granted an extension. Respondent claimed that she called Levitsky and explained to him that she had not even determined whether she was going to represent VanAtta. Respondent testified that she did not file an answer to the complaint because she was uncertain about the wishes of her client. Moreover, respondent stated, she was not sure as to when she had actually been retained. Nevertheless, respondent recalled advising VanAtta that a retainer was needed in the matter. She believed that she had provided VanAtta with a written fee agreement because it was her practice to do so. However, respondent did not specifically recall the fee agreement in this matter.

Respondent did a certain amount of work in behalf of VanAtta. She filed a motion to vacate or to amend the divorce judgment and a motion for an interlocutory appeal. Respondent was also available and appeared at numerous court dates. Respondent blamed part of the problems with the case on her inability to obtain certain information from credit card companies. Another problem with VanAtta's case, according to respondent, was that she was unable to afford an expert witness. As a result, respondent explained, she had to subpoena a number of witnesses to try to establish the value of the business. Respondent admitted, though, that the court had barred much of the testimony because of respondent's failure to comply with the discovery orders. Respondent claimed that she objected to the form or content of one of the orders. She did not, however, produce any evidence to substantiate this claim.

Respondent denied ever telling VanAtta, following the denial of the interlocutory appeal, that the case was proceeding smoothly. In fact, respondent claimed that she explained all the problems to VanAtta, including that it was unlikely that their motion would be granted. Respondent apparently interpreted as beneficial to her client the court's statement on the order denying her motion: "[a]ll offers of proof at trial which are excluded shall be preserved on the record. See R.1:7-3."[1] It appears from VanAtta's testimony, though, that VanAtta either misunderstood respondent's explanation of the outcome of the motion or respondent's explanation of the notation on the order, or was misled as to its import. Respondent also denied attributing the problems with the case to the judge's sexual preferences. In fact, she claimed that it was VanAtta who inquired about the judge's sexual tendencies.

As to VanAtta and her son's personal injury claims, respondent denied that she had been retained to represent them in those matters, explaining that she was not a member of the Delaware bar. She admitted, however, that she communicated with the insurance carrier because VanAtta was having difficulty paying her medical bills. According to respondent, VanAtta felt that, if respondent spoke to the insurance adjuster, it would be helpful to VanAtta because VanAtta felt that she was just being "strung along."

Respondent did not recall sending any letters to the insurer in VanAtta's behalf. It is clear from Siegel's testimony, however, that the insurer believed that respondent was acting as VanAtta's attorney, since the insurer was initially unwilling to release a settlement check

[1] The intent of the rule is to preserve excluded testimony in the event of an appeal.

unless respondent's name appeared on the check.

In mitigation, respondent testified that she had approximately 150 open files at any given time period. Respondent told the DEC that she maintained a general practice and that the majority of her cases were criminal defense, municipal court and domestic relations matters.

Respondent stated that she has not applied for reinstatement because she believes that she cannot comply with the requirement of proof of fitness to practice law. Respondent testified that she had met with a psychiatrist who, although not diagnosing her with any particular ailment, recommended that she take medication for her problems. Respondent, however, was not comfortable with the doctor's recommendation. She stated that she has not consulted with another psychiatrist because of the expense involved.

Respondent explained that she stopped practicing law even before her suspension because of numerous family problems, including the death and illness of her father and several aunts. Respondent added that, over a period of time she was required to care for at least two elderly aunts, assist her mother in caring for her father and handle their estates and/or any businesses in which they were involved.

The DEC found that much of respondent's testimony was unpersuasive. Initially, respondent testified that she had not filed a responsive pleading in the divorce case because she was uncertain about the desires of her client. The DEC found that the only significant issue to be addressed in the proceeding was that of equitable distribution, a fact known to respondent since her first meeting with VanAtta. Moreover, the DEC found that

respondent's certification filed in connection with the motion to vacate or modify the final judgment of divorce acknowledged the need to compile and utilize voluminous information to answer the complaint." Thus, the DEC found that respondent's failure to answer the complaint within the extended time constituted gross neglect.

The DEC also believed that respondent agreed to represent VanAtta at the time of their initial conference in June 1992. The DEC reasoned that, if there had been any questions about the representation, they had been answered when VanAtta paid respondent a retainer shortly thereafter, on July 8, 1992.

As to the issue of the written fee agreement, respondent claimed that she had prepared such an agreement. However, the DEC found VanAtta's testimony to be more convincing on that issue.

With regard to the personal injury matter, the DEC found, despite respondent's contention to the contrary, that she had agreed to represent VanAtta and her son in some, if not all, aspects of the claims arising from the accident. The DEC found that this conclusion was supported not only by the testimony of VanAtta, but also by the August 5, 1994 correspondence between respondent and Martin Siegel (Exhibit C-9) and respondent's correspondence to VanAtta referring to the personal injury "file" as "the case for which I can be paid." The DEC also considered Siegel's testimony that the insurance carrier would not pay the settlement proceeds without adding respondent's name to the proceeds check. The DEC found that to be clear and convincing proof that respondent had been retained by VanAtta and her son to provide legal services in connection with a personal injury claim and

that respondent expected payment for her services.

The DEC also found that both Siegel and Voyles encountered difficulties in obtaining files from respondent. The DEC interpreted respondent's correspondence to mean that she would not release the files until matters pertaining to the payment of her fees were addressed to her satisfaction. The DEC found such a condition to be a violation of RPC 1.16(d).

The DEC further found that respondent failed to cooperate with the DEC in its investigation of the matters, in violation of RPC 8.1(b). The DEC rejected respondent's claim that her personal family problems prevented her from replying to any of the DEC's requests for information about the grievance.

Based on the totality of the circumstances, the DEC found, in VanAtta, a pattern of conduct involving dishonesty, deceit and misrepresentation intertwined with neglect. The basis for the DEC's finding of a violation of RPC 8.4(c) was respondent's failure to file a responsive pleading, even though she had assured VanAtta that she had already done so; her statement to VanAtta that the matter could go forward to trial, even though respondent knew that she had violated the discovery schedule established by the court; her representation to VanAtta that VanAtta had "won" the appeal, when in fact that was untrue; and, lastly, her conduct in blaming the court's decision on the judge's sexual inclination, when in reality the court's refusal to hear expert testimony was the result of respondent's own inaction in the case.

As a result of the foregoing, the DEC found violations of RPC 1.1(b), RPC 1.5(c), RPC 1.16(d), RPC 8.4(c) and RPC 8.1(b). The DEC did not find violations of RPC 1.16(a)

or RPC 3.2.

The DEC concluded that respondent had attempted to avoid responsibility for her negligence by blaming her adversary, the courts and the system. The DEC found that respondent was unwilling to accept the possibility that she might have violated her professional obligations to her client. The DEC saw no signs of remorse for her conduct or sympathy for her client. Also, the DEC saw no evidence of rehabilitation. Moreover, the DEC noted respondent's earlier disciplinary history and found strikingly similar violations in respondent's last matter. The DEC, thus, concluded that respondent has not dealt with her problems in the past and has shown no inclination to deal with them now.

Because the DEC was not convinced that respondent could conform to the professional responsibility rules, if afforded the privilege to practice in the future, the DEC recommended that she be disbarred.

Docket No. I-97-008E

According to the stipulation, in March 1991, grievants Walter and Mary Sierocinski met with respondent to discuss a problem with a termite extermination company. At their initial meeting, the Sierocinskis paid respondent a $35 consultation fee. At the DEC hearing, respondent explained that Mary had purchased a house before her marriage to Walter. Prior to selling the house, Mary learned that there was termite damage to the premises, even though she regularly paid a termite company to treat the property. As a result of the damage, when Mary sold the house she was required to give certain credits to the

purchasers for repairs to the premises.

The stipulation further explained that, between March and September 1991, the Sierocinskis made numerous attempts to contact respondent, both by telephone and by visiting respondent's office. Although the stipulation does not specifically state so, it can be inferred that their attempts were unsuccessful. On September 10, 1991 the Sierocinskis wrote to respondent inquiring about what respondent had done since they had last spoken to her in March 1991. They did not receive a response to their letter.

The stipulation further stated that

> on November 19, 1991, Grievants understood that the scheduling of their case respecting the termite extermination contractor would be difficult inasmuch as the case load in the courts was so high.

According to the stipulation, respondent agreed to advise the Sierocinskis in the "near future" about the status of the matter.

The stipulation established that Mary Sierocinski met with respondent on February 9, 1993. At that time she paid respondent a retainer fee of $250. Respondent explained to Mary that the money was necessary to file a complaint to pursue her claim. Respondent further explained to Mary that delays were likely to occur because the courts were "overloaded," a situation over which she had no control. Respondent did not provide the Sierocinskis with a retainer agreement upon the payment of the fee or at any time thereafter.

Between February 1993 and May 1995, the Sierocinskis sought information about the status of their case by leaving telephone messages for respondent or by making personal visits to her office. They received no satisfactory reply from respondent. According to the

stipulation, respondent believed that, through a miscommunication, the Sierocinskis believed that a trial would be scheduled for October 1994, October 1995 and October 1996. No hearing, trial or other court appearance was held between 1994 and 1996. The Sierocinskis made several additional attempts to contact respondent, the last one on January 23, 1996.

Respondent did not file a lawsuit on behalf of the Sierocinskis.

The DEC sent respondent a copy of the Sierocinskis' grievance under cover letter dated March 5, 1997. On March 13, 1997 the DEC sent a second letter to respondent by both certified and regular mail requesting a reply to the grievance. Again, respondent did not reply to the letter. The returned receipt bore a signature purporting to be that of respondent.

Eventually, respondent filed an answer to the complaint on June 30, 1997.

Respondent admitted that her conduct was a violation of RPC 1.3, RPC 1.4, RPC 1.5, RPC 3.2, RPC 8.4(c) (only as to conduct involving misrepresentations) and RPC 8.1(b).

In addition to the foregoing, the complaint in the matter had charged respondent with a violation of RPC 1.1(b) (pattern of neglect). Respondent did not admit such a violation in the stipulation. Nevertheless, the DEC found all of the above violations, as well as a pattern of neglect. Based on the misconduct in this matter as well as in the VanAtta matter, the DEC recommended that respondent be disbarred.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the record.

A review of the exhibits and the testimony in this matter shows that respondent spent a significant amount of time attempting to further VanAtta's equitable distribution claim. However, due to respondent's initial negligence, she was required to spend much more time than necessary advancing VanAtta's claim. Rather than admit that she had neglected to file a timely answer, respondent spun a very unlikely tale of events. The DEC had the opportunity to view respondent's demeanor at the hearing and determined that the testimony of other witnesses was more credible than hers.

From beginning to end, respondent refused to take responsibility for the errors she committed in the VanAtta matter. At the outset, respondent claimed that, when she initially spoke with VanAtta, it was not clear that she would be representing her in connection with the equitable distribution claim. VanAtta's testimony clearly dispels such a notion. VanAtta testified unequivocally that, when she first met with respondent, it was her intention to file for bankruptcy. However, VanAtta contended, respondent talked her out of it, convincing her that it was unnecessary to ruin her credit; respondent advised that a better way to proceed would be to file for the equitable distribution of the marital assets and debts. VanAtta believed from their initial meeting, in June 1992, that respondent was going to represent her in the matter. In fact, VanAtta also understood that respondent would request from Levitsky an extension of time to file an answer to the divorce complaint. VanAtta's testimony was corroborated not only by Levitsky's letter granting the extension, but also by respondent's

own certification in support of a motion to modify the judgment of divorce. Respondent's claim – that, when she received Levitsky's letter granting the twenty-day extension to file an answer, she had not even informed Levitsky that she intended to answer the complaint – is as unbelievable as her testimony that her client had not yet decided how she wanted to proceed in the matter.

Thereafter, respondent failed to file an appearance or an answer to the complaint. By way of explanation, respondent stated that she was not sure that she had been retained by VanAtta, because she had not been paid a retainer, and that she did not know what direction her client wanted to take.

Respondent made a number of misrepresentations to her client. Respondent informed VanAtta that she had filed an answer to the complaint and that she was surprised when a default judgment was entered. Thereafter, respondent misled VanAtta about the fact that certain evidence concerning the VanAttas' business had been barred by the court because of respondent's failure to provide court-ordered discovery. Moreover, after respondent filed a motion for interlocutory appeal and the motion was denied, respondent failed to inform her client of the true outcome. Respondent informed VanAtta that all was well. It was only at the trial that VanAtta learned that certain evidence had been precluded from being offered. When she questioned respondent about that development, respondent attributed the judge's decision to bias based on sexual preferences.

Respondent's testimony throughout the DEC proceeding was either intentionally evasive or deliberately non-responsive. She either conveniently "forgot" facts or was

determined to cover up her wrongdoing. For example, respondent testified that she had objected to an order entered by the court. However, she was unable to present any evidence to substantiate her objections or to identify the order. Her testimony in this regard, therefore, could not be believed.

As noted by the DEC, respondent was unwilling to acknowledge that she may have violated her professional obligations to her client. Rather than accept responsibility for her negligence, respondent blamed her adversary, the courts and the system for all of the problems with the case.

Respondent's misconduct was serious. She made misrepresentations to cover up her neglect, in violation of RPC 8.4(c). Additional violations in the VanAtta matters included respondent's failure to prepare a written fee agreement and her failure to surrender files to the new attorney, violations of RPC 1.5(c) and RPC 1.16(d), respectively. As to the charge of a violation of RPC 8.1(b), because respondent ultimately did cooperate with the DEC by filing an answer to the amended complaint, the Board has dismissed that charge.

In the Sierocinski matter, respondent's conduct included violations of RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.5 (failure to provide a written retainer agreement), RPC 3.2 (failure to expedite litigation), RPC 8.4(c) (misrepresentations to the client) and RPC 8.1(b) (failure to cooperate with the DEC).

Although respondent neglected the VanAtta and the Sierocinski matters, the Board disagreed with the DEC's conclusion that neglect in only two matters constitutes a pattern of neglect, in violation of RPC 1.1(b). Generally, a finding of a pattern of neglect is made

where the conduct encompasses at least three matters.

Respondent's failure to admit her wrongdoing was troubling. Moreover, her numerous misrepresentations to her clients caused grave concern to the Board. Nevertheless, respondent's misconduct in these two matters does not warrant disbarment, as suggested by the DEC. The Board was persuaded that a lengthy term of suspension would protect the public interest and provide respondent with ample opportunity to mend her practices.

In more egregious matters involving attorneys with multiple misconduct matters and significant disciplinary histories, three-year suspensions have been imposed. See In re Smith, 148 N.J. 375 (1997) (gross neglect in one matter, misrepresentation to client about status and failure to cooperate with disciplinary authorities; attorney had prior one-year and six-month suspensions as well as a private reprimand; the attorney also had additional six-month retroactive suspension); and In re Gaffney, 146 N.J. 422 (1996) (misconduct in eleven matters, including gross neglect, pattern of neglect, failure to communicate, lack of diligence, failure to cooperate with disciplinary investigation, failure to return client files or other property, misrepresentations, conduct prejudicial to the administration of the justice, conduct intended to disrupt a tribunal, knowingly disobeying an obligation under the rules of a tribunal and failure to reduce a fee agreement to writing, each violation was not present in every matter; at the time of the imposition of the three-year suspension, the attorney was already serving a two and one-half year suspension for prior ethics violations).

Under less serious circumstances, the Court has imposed two-year suspensions. See In re Pollan, 151 N.J. 494 (1997) (in five matters spanning from the late 1980s to 1994,

attorney displayed pattern of neglect, lack of diligence, failure to communicate, failure to surrender property and papers to a client, failure to expedite litigation and failure to cooperate with disciplinary authorities; prior six-month suspension); In re Greenbaum, 147 N.J. 271 (1997) (attorney disciplined in New York for grossly neglecting a matter, misrepresenting status to client and improperly engaging in business transaction with former client in which he made false representations to client about the soundness of the investment); and In re Grosser, 143 N.J. 561 (1996) (ten instances of professional misconduct, including neglect, lack of diligence, dishonesty, fraud, deceit and misrepresentation, failure to release files after being discharged, failure to cooperate with disciplinary authorities and conduct designed to limit liability to a client for malpractice).

Based on the foregoing cases and considering the mitigating circumstances in these matters involving, as it did, problems with close family members of respondent, the Board unanimously determined to impose a two-year suspension.

The Board further determined to require respondent, prior to reinstatement, to submit proof of fitness to practice law from a psychiatrist approved by the Office of Attorney Ethics.

The Board further determined that, prior to reinstatement, respondent is to take the skills and methods courses, including courses in professional responsibility, offered by the Institute for Continuing Legal Education.

The Board further determined that, upon reinstatement, respondent is to practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for a three-year period.

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

Dated: December 17, 1998

By: _____
JAMES R. ZAZZALI
Vice Chair
Disciplinary Review Board