

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-226

IN THE MATTER OF
SUSAN BELL BOLNO
AN ATTORNEY AT LAW

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Decision

Argued: October 16, 2003

Decided: December 10, 2003

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (“OAE”) pursuant to R.1:20-14, following respondent’s two-year suspension in Pennsylvania for misconduct in four matters.

Respondent was admitted to the New Jersey bar in 1988 and the bar of the Commonwealth of Pennsylvania in 1978. Although she has no history of discipline,

respondent was temporarily suspended by the Court, effective April 12, 1999, for failure to comply with the determination of the District IV Fee Arbitration Committee. She remains suspended to date.

In December 2000, the Pennsylvania Office of Disciplinary Counsel filed a Petition for Discipline (formal complaint) against respondent charging a number of violations, similar to our Rules of Professional Conduct, including RPC 1.1 (failure to provide competent representation), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.5(c) (at the conclusion of a contingent fee matter, failure to provide the client with a written statement stating the outcome, and an explanation of the method of determining the recovery, if any, remitted to the client), RPC 1.15(b) (failure to promptly deliver funds to a client or third person), RPC 1.16(d) (upon termination of representation, failure to take steps reasonably practicable to protect a client's interests), RPC 3.1 (prohibition against bringing or defending a frivolous proceeding or issue), RPC 3.2 (failure to expedite litigation), RPC 4.1(a) (knowingly making a false statement of material fact or law to a third person), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The first four counts of the complaint dealt with respondent's misconduct in four cases: two personal injury matters and two divorce matters. The fifth count dealt with misstatements she made on her Pennsylvania annual registration form, in which she concealed the fact that she had been placed on temporary suspension in New Jersey.

The hearing committee issued a report in February 2002, finding respondent guilty of all charges and recommending a six-month period of suspension, followed by a six-month probation period. The matter proceeded to the Disciplinary Board of the Supreme Court of Pennsylvania, which sustained all of the charges and recommended that respondent be suspended for a period of one year and one day. The report and recommendations of the Disciplinary Board set forth a concise summary of the facts in the matter:

Respondent admitted to the misconduct and stipulated to the facts alleged by Petitioner. Respondent also stipulated to all of the Rules violations charged by Petitioner, except for RPC 8.4(c).

Upon examination of the evidence, the Hearing Committee concluded that Respondent did violate RPC 8.4(c), as she misrepresented the status of cases to her clients and created documents to perpetuate the misrepresentations. Respondent was well aware of her actions at the time she took them. Respondent's intentional misstatements on her attorney registration form that she was 'inactive' in New Jersey, rather than suspended, also support a finding that she violated Rule 8.4(c). The Board agrees with the Committee's findings and draws the same conclusion that Respondent did engage in dishonest conduct violative of Rule 8.4(c).

The Board must now determine the appropriate sanction to address Respondent's conduct. For seven years, Respondent engaged in a pattern of accepting cases, providing minimal initial services, and then permitting the files to languish. She did not communicate with her clients or other counsel and ignored court orders to the detriment of her clients' cases. Respondent went so far as to make misrepresentations and fabricate letters to cover her neglect. Respondent's ability to ignore her responsibilities extended to her initial involvement in the disciplinary system, when she ignored the Form DB-7's she received in four of the matters described above. Respondent did not make restitution to her injured clients for the harm she caused them. It is clear that Respondent engaged in serious professional misconduct.

Respondent explained that she neglected the affairs of her clients because she was having problems coping with issues both personal and

professional and was not able to effectively make decisions to resolve these problems. Respondent characterizes herself during the time period of the misconduct as indecisive and fearful of making a mistake. In addition to her professional difficulties, Respondent was diagnosed with Hepatitis C in 1998 and began treatment in 1999. The treatment ended in 2000. Respondent experienced side effects such as exhaustion, depression and significant hair loss during the treatment. She was also enmeshed in a difficult divorce which became final in 2000. Respondent's difficulties do not meet the standard set forth in Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989) to entitle her to mitigation. In Braun, the Supreme Court held that a respondent's psychiatric condition may mitigate the discipline where the respondent proves that the condition was a causal factor in the professional misconduct. The evidence offered by Respondent is not sufficient to meet this standard, nor does Respondent attempt to argue that it is.

The Hearing Committee recommended that Respondent be suspended for a period of six months followed by a probation period of six months. This recommendation does not give adequate weight to the extent of Respondent's misconduct. In light of the seriousness of her actions, the Board is persuaded that a suspension of one year and one day is the appropriate sanction. While it is true that this is Respondent's first encounter with the disciplinary system and she has shown remorse, her misconduct is troublesome. Respondent was unable to take even simple steps to resolve matters for the benefit of her clients. Respondent testified that she decided to seek psychiatric treatment after Office of Disciplinary Counsel became involved. At the time of the disciplinary hearing, she had attended four sessions with a Dr. Kevin Hails. Respondent's instinct to get help is certainly appropriate, as her personal problems are unquestionably challenging, and it is the Board's opinion that Respondent needs time to sort out the issues with her practice and to then prove at a reinstatement hearing that she is fit to practice law.

Following a review by the Supreme Court of Pennsylvania, it imposed a two-year suspension, effective April 6, 2003.

The OAE urged that we impose a two-year suspension retroactive to the effective date of respondent's Pennsylvania suspension.

Upon a de novo review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests on purposes of disciplinary proceedings), we adopt the findings of the Supreme Court of Pennsylvania.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which directs that

[t]he Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

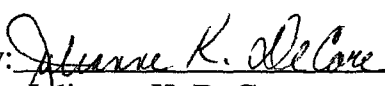
We agree with the OAE that a review of the record does not reveal any conditions that would fall within the ambit of sub-paragraphs (A) through (E). The OAE correctly stated that New Jersey attorneys who have engaged in similar misconduct have received two-years suspensions. See In re Stalcup, 159 N.J. 513 (1999) (two-year suspension where in two matters, attorney engaged in gross neglect, lack of diligence, failure to communicate with client, failure to provide a written retainer agreement, failure to

expedite litigation, failure to cooperate with disciplinary authorities, and misrepresentations to clients about the status of the matters; attorney had a prior reprimand, was temporarily suspended for failure to comply with a fee arbitration determination and was suspended for three-months); In re DePietropolo, 127 N.J. 237 (1992) (two-year suspension for pattern of neglect in five matters, misrepresentations and failure to communicate with clients, and failure to cooperate with ethics authorities); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for pattern of neglect and abandonment of four cases, failure to maintain a bona fide office, and failure to cooperate with ethics authorities).

Based on respondent's extensive violations in the four matters, and her misrepresentations on her Pennsylvania annual registration form, we unanimously determined to impose a two-year suspension retroactive to respondent's Pennsylvania suspension, effective April 6, 2003. We further determined to require respondent to submit prior to her reinstatement, proof of payment of the fee arbitration award and costs, and proof of fitness to practice law as attested by a mental health professional approved by the OAE.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

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


In the Matter of Susan Bell Bolno
Docket No. DRB 03-226

Argued: October 16, 2003

Decided: December 10, 2003

Disposition: Two-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Two- year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>		X					
<i>Holmes</i>		X					
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		9					


Julianne K. DeCore
Chief Counsel