

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-241  
District Docket Nos. XIV-2003-0243E  
and XIV-2004-0046E

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IN THE MATTER OF  
BARBARA H. DUPRE  
AN ATTORNEY AT LAW

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

Decided: October 26, 2004

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 Rule  
1:20-4(f).

Respondent was admitted to the New Jersey bar in 1980. On  
April 22, 2004, in a default matter, she was suspended for three  
months for gross neglect, lack of diligence, failure to

communicate with a client, failure to cooperate with disciplinary authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Dupre, 179 N.J. 424 (2004). Respondent has been temporarily suspended since March 4, 2003, for failure to comply with a fee arbitration committee determination. In re Dupre, 175 N.J. 533 (2003).

On May 26, 2004, the OAE sent a complaint by certified and regular mail to respondent's last known business address in Northfield, New Jersey, and to her last known home address in Linwood, New Jersey. The mail sent to the business address was returned marked "unable to forward." The mail sent to the home address was not returned. On June 22, 2004, the OAE sent a second letter by certified and regular mail to the home address, advising respondent that, unless she filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on her failure to answer the complaint. Neither letter was returned.

Respondent did not file an answer to the complaint. The OAE certified the record directly to us for the imposition of discipline, pursuant to Rule 1:20-4(f).

On April 9, 2003, after respondent was temporarily suspended from the practice of law, she appeared in Superior Court on behalf of a client in a matrimonial matter. At that proceeding, she entered her appearance and examined a witness. On April 21, 2003, respondent appeared before the same judge in the same case, entered her appearance, and was prepared to examine a witness when the matter was settled. Although respondent denied knowledge that she had been temporarily suspended for failure to pay the fee arbitration award, she admitted that she had a large bag of mail, including letters from the OAE, that she had not opened. Count one of the complaint charged respondent with violating RPC 5.5(a) (practicing law while suspended).

On May 13, 2003, following respondent's March 4, 2003 temporary suspension, the OAE sent a letter reminding her of the obligation to file an affidavit of compliance with Rule 1:20-20 and requesting a reply by May 30, 2003. Respondent did not file the affidavit by the deadline. In a telephone conversation on January 22, 2004, the OAE again reminded respondent of the

necessity of filing the affidavit. During that telephone call, respondent stated that she suffered from drug addiction and depression. Respondent represented that she would submit the affidavit to the OAE the following week. Respondent never filed the affidavit. Count two of the complaint charged respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

In February 2002, Barbara Potter retained respondent to represent her to file an appeal of a child support order and to file a motion to increase child support. Respondent informed Potter that the fee for the appeal was \$2,500 plus \$375 for transcripts, and that the fee for the motion was \$750. Respondent did not prepare a written fee agreement. Potter paid respondent \$2,500 on February 26, 2002, \$375 on April 12, 2002, \$250 on May 2, 2002, \$250 on May 17, 2002, and an additional \$150 on May 17, 2002. Potter paid the extra \$150 on May 17, 2002, because respondent agreed to reduce her fee by \$100 if Potter paid \$150 on that date.

After May 2002, respondent failed to advise Potter about the status of the case. She also misrepresented to Potter that, although the appeal was pending, there was no activity to

report, and that the court had caused delays in the hearing on the child support motion.

After May 2002, respondent closed her law office, stopped opening her mail, and began practicing from a friend's law office. She did not notify Potter of these changes. Finally, in April 2003, Potter discovered, by telephoning the Appellate Division, that the appeal had been dismissed on July 23, 2002, because respondent failed to file either the transcripts or a brief. Potter also learned that the motion to increase child support had been dismissed on October 1, 2003 for respondent's failure to serve Potter's former husband. When respondent attempted to refile the motion on October 24, 2002, the court rejected it because she had been declared ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. On April 2, 2003, respondent's motion was again rejected because she had been suspended as of March 4, 2003.

Count three of the complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client), RPC 1.5(b) (failure to prepare a written fee agreement), RPC 1.16(d) (failure to protect a client's interests upon

termination of the representation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Service of process was properly made. 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 of the complaint are deemed admitted. Rule 1:20-4(f).

It is unquestionable that respondent practiced law while she was suspended. The judge who referred the matter to the OAE reported that she had appeared in court twice in a matrimonial matter and had examined a witness. Although respondent claimed that she was not aware of her suspension, she admitted that she had not opened her mail, including letters from the OAE. Despite respondent's refusal to read her mail, we find that she had constructive notice of her suspension.

Respondent also failed to comply with the requirements of Rule 1:20-20. Despite the OAE's reminders of her obligation to file an affidavit of compliance and despite her assurance that she would submit the affidavit, she failed to do so.

Finally, in representing Potter, respondent failed to prosecute the appeal, allowing it to be dismissed; failed to serve her adversary with the motion to increase child support,

allowing it, too, to be dismissed; failed to inform her client of the status of the case; misrepresented the reasons for the delay in the case; failed to prepare a written fee agreement<sup>1</sup>; and failed to protect her client's interests upon termination of the representation.

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.16(d), RPC 5.5(a), RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d).

The remaining issue is the quantum of discipline to be imposed. Ordinarily, the level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed where the attorney practiced law while suspended, made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with

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<sup>1</sup> Rule 5:3-5(a) requires all agreements for legal services in civil family actions to be in writing, signed by the attorney and the client.

disciplinary authorities); In re Beltre, 130 N.J. 437 (1992) (three-year suspension imposed where the attorney appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office, and failed to cooperate with an ethics investigation); In re Cubberley, 178 N.J. 101 (2003) (attorney who solicited and continued to accept fees from a client after he had been 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 file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to the OAE's requests for information received a three-year suspension; Cubberley had a significant disciplinary history); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension where the attorney continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, failed to keep complete trust records, failed to advise her adversary of the whereabouts and amount of escrow funds, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation); In re



Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; the attorney also made misrepresentations to the court, and was convicted of stalking a woman with whom he had had a romantic relationship and engaging in the unauthorized practice of law); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while suspended, gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing). But 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 not charge his friend for the representation).

Here, respondent's incidences of practicing law while suspended were not as flagrant as those of the above attorneys, who had actual knowledge of their suspensions and continued to practice law. Some also misrepresented their status or failed to disclose to the court that they had been suspended. Indeed, in describing the conduct of the attorney in Kasdan, supra, the Court stated:

The evidence clearly and convincingly demonstrates that respondent deliberately decided she would continue to practice law, notwithstanding this Court's unequivocal and express denial of her application to stay her three-month suspension. She misrepresented to both her adversaries and the courts her status as that of a duly licensed attorney fully eligible to practice.

[In re Kasdan, supra, 132 N.J. at 107.]

The gravity of the "practicing while suspended" violation, thus, stems from the willful disobedience of the Court order prohibiting the suspended attorney from engaging in the practice of law. Here, there is no evidence to contradict respondent's statement that she did not have actual notice of her suspension. Respondent, thus, did not have the mens rea to practice law

during a period of suspension. Although respondent's lack of awareness of her suspension does not excuse her conduct, it is a substantial mitigating factor. In our view, her misconduct warrants significantly less discipline than that of the attorneys who knowingly and flagrantly practiced law while suspended, just as attorneys who negligently misappropriate client funds receive substantially less severe discipline than attorneys who knowingly misappropriate client funds.

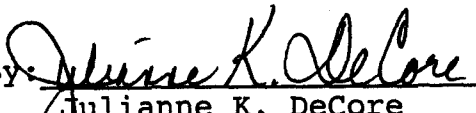
On the other hand, in addition to practicing law while suspended, respondent was guilty of the other violations mentioned above, that is, failure to comply with Rule 1:20-20, gross neglect, lack of diligence, failure to communicate with a client, failure to prepare a written fee agreement in a matrimonial case, failure to protect a client's interests upon termination of the representation, and misrepresentation of the status of a matter to a client. In addition, respondent failed to file an answer to the ethics complaint, permitting this matter to proceed by way of default. Respondent's ethics history consists of a three-month suspension and the temporary suspension for failure to comply with the fee arbitration award.

In light of all of the above circumstances, including the default nature of this matter, we determine that a six-month

suspension is warranted. Before reinstatement, respondent must submit a report from a mental health professional approved by the Office of Attorney Ethics, concluding that she is fit to practice law. Members Barbara F. Schwartz and Spencer V. Wissinger, III did not participate.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Barbara H. Dupre  
Docket No. DRB 04-241

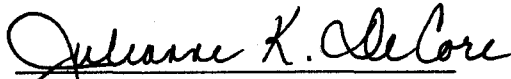
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Decided: October 26, 2004

Disposition: Six-month suspension

Members	Six-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan	X				
Holmes	X				
Lolla	X				
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger					X
<b>Total:</b>	7				2

  
Julianne K. DeCore  
Chief Counsel