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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-095
District Docket No. XIII-02-025E

IN THE MATTER OF :
:
DEBORAH A. PIERCE :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: May 20, 2004

Decided: June 21, 2004

Karen A. Gugliotta appeared on behalf of the District XIII Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1 (presumably (a) (gross neglect)), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation); RPC 8.4 (presumably (d)) (conduct prejudicial to the administration of justice), and

RPC 8.1(b) (cited in the complaint as R.1:20-3(g)(3)) (failure to comply with reasonable requests for information from a disciplinary authority).

Respondent was admitted to the New Jersey bar in 1994. At the relevant times she maintained a law office in Vauxhall, New Jersey, and in Watchung, New Jersey.

In 2003, respondent received a reprimand for misconduct in three cases that included gross neglect, pattern of neglect, lack of diligence, failure to communicate with client, failure to communicate in writing the basis or rate of the fee, and failure to cooperate with disciplinary authorities. In re Pierce, 177 N.J. 502 (2003).

A DEC hearing in this matter was scheduled for January 27, 2004. By letter dated December 23, 2003, respondent informed the Panel Chair that it was "impossible" for her to attend the hearing because she had been "without income and transportation since October, 2002." The letter further stated that she had been unable to obtain meaningful employment in light of this and her previous ethics matter. As a result she waived her appearance at the DEC hearing and stated that she would rely on her answer to the complaint and attached exhibits. Notwithstanding the DEC's follow-up letter, dated January 13, 2004, mandating her appearance at the hearing, respondent did not appear.

The facts in this matter were, therefore, gleaned from the complaint, respondent's answer and the presenter's statements at the DEC hearing.¹

According to respondent's answer to the complaint, she has been a pool attorney for the Public Defender's Office, Appellate Section, since 1998. From November 1996 through November 2001, she maintained a law office at 901 Valley Street, Vauxhall, New Jersey. On December 3, 2001, she relocated her practice to 10 Johnston Drive, Watchung, New Jersey.

On December 17, 2001, the Office of the Public Defender ("OPD") assigned to respondent an appeal in the matter of State v. Louis E. Stout, No. A-4873-00T4(DC1). The record does not indicate what method was used by the OPD to transmit the case or assign it to respondent. According to respondent's answer, she had already moved her office to Watchung and had so notified the OPD, around December 10, 2001. Although respondent did not elaborate as to how the notification was made, she referred to Exhibits A, B, and C appended to her answer. Exhibit A is respondent's transmittal letter to the OPD, forwarding various documents in another matter. The transmittal sheet listed her Watchung address. Respondent also attached the cover page of a

¹ The presenter put forth her case in the matter, relying on the complaint, her investigation (the presenter did not offer an investigative report into evidence), and by responding to inquiries from the DEC. She did not testify under oath, however.

brief in that other matter, listing the Watchung address. Neither document specifically notified the OPD that she had moved. Exhibit B is an invoice to the OPD for payment for respondent's services in that same matter. Similarly, this document listed the Watchung address, but did not specifically alert the OPD that she had moved. Only respondent's February 14, 2002 letter to the OPD specifically stated that she had relocated her office to the Watchung address. The letter was sent to the OPD in Trenton, New Jersey, not to the Appellate Section in Newark, where she had sent prior correspondence.

On December 20, 2001, the court issued a scheduling order in the Stout matter, which required the OPD to file an appellate brief and appendix no later than February 15, 2002. According to the DEC presenter, the "scheduling order/or documentation were provided to [respondent] by way of a transmittal dated December 17, 2001." Although the record does not specify to which of respondent's offices the transmittal was sent, we infer that it was sent to the Vauxhall office, where subsequent papers were sent. Respondent did not file a brief in the Stout matter.

On April 10, 2002, the Honorable David S. Baime, P.J.A.D., issued an order to show cause requiring respondent to either appear before the court on May 13, 2002, or file the brief by May 3, 2002, after which the order to show cause would be withdrawn. Although the record is silent about where the order

was mailed, we assume it was mailed to the Vauxhall address, as the court sent subsequent orders there. Respondent neither filed a brief, nor appeared in court.

On May 16, 2002, the Appellate Division issued another order to show cause, requiring respondent to pay a sanction of twenty dollars per day beginning May 14, 2002, and continuing until such time as the brief was filed. Respondent did not file the brief. Therefore, the Honorable Edwin H. Stern, P.J.A.D., issued another order to show cause, on September 23, 2002, requiring respondent to appear on October 8, 2002, and show cause why sanctions should not be imposed for her continued failure to file the brief. According to the DEC presenter, the order to show cause was mailed to respondent on September 24, 2002, by regular mail, to her 901 Valley Street, Vauxhall, New Jersey address. Because the letter was not returned to the court, it was presumed delivered. Respondent did not appear on the return date.

On October 9, 2002, Judge Stern issued another order to show cause, requiring respondent to appear on October 22, 2002. It was mailed to her by regular and certified mail, return receipt requested, to both the Vauxhall and the Watchung addresses. According to the presenter, the Vauxhall address was listed in the 2002 New Jersey Lawyers' Diary and Manual ("Lawyers' Diary"), as well as on the OPD's Appellate Designated

Counsel List. The court obtained the Watchung address from the New Jersey Lawyers' Fund for Client Protection ("the Fund"). Apparently, the mail sent to the Vauxhall address was returned. Although the regular mail sent to the Watchung address was not returned, the certified mail was returned stamped "refused 10/15/02." The court, on four occasions, also attempted to "fax" a copy of the order to respondent at the number listed in the Lawyers' Diary and the designated counsel list. The transmissions were unsuccessful. Again, respondent failed to appear.

Thereafter, the court referred the matter to the Office of Attorney Ethics ("OAE"). The OAE forwarded the matter to the DEC for an investigation. On November 14, 2002, the DEC sent a copy of the grievance to respondent, seeking her reply within ten days. The record is silent about the mailing address used by the DEC. On December 24, 2002, the presenter spoke to respondent and requested that she reply to the grievance in writing. According to the presenter, respondent informed her that she would be admitting the allegations of the grievance and would leave it to the "Committee to dispose of that matter as they found appropriate." Although the presenter encouraged respondent to submit a written reply, respondent did not address the allegations until she filed her answer (dated October 30, 2003).

Respondent did not respond to the orders to show cause because,

[a]ccording to the Investigative Report, all correspondence and documents directed to me with respect to the subject appeal (State v. Stout, Docket No. A-4873-00T4) from December 17, 2001 through October 9, 2002, were sent to the Vauxhall location, which was after the time when my practice had been relocated, and after the Public Defender's Office was last made aware on February 14, 2002 of the new location of my law office. Consequently, I did not receive said correspondence and documents.

[A2.]²

Respondent added that, during the month of October 2002, she was forced to permanently close her law office because of "logistical and financial problems which solutions thereto were beyond [her] control." According to respondent, by the time the October 9, 2002 correspondence was sent to Watchung, her office was already closed and she did not receive the correspondence. She added that neither she, nor anyone associated with her law practice, "refused to accept" the certified letter on October 15, 2002.

Respondent claimed that, during a December 24, 2002 telephone conversation with the presenter, the presenter instructed her to withhold her response to the grievance until

² "A" denotes respondent's answer to the complaint, dated July 30, 2003.

the outcome of another complaint against her was resolved; at that time, the presenter would instruct her on how to proceed in the instant matter. Respondent claimed further that the presenter never again contacted her; rather, the presenter "prematurely" filed a complaint in the matter.

The presenter denied telling respondent to refrain from filing a reply to the grievance. In fact, her recollection was that she instructed respondent to file a written reply regardless of any statements respondent had made to her.

The DEC determined that respondent did not engage in any misconduct in connection with the first three orders to show cause, as only the fourth one, mailed in October 2002, was mailed to her Watchung address. Based on the evidence presented, the DEC was unable to determine whether respondent had made adequate arrangements to have her mail forwarded from her Vauxhall office to her Watchung office, or whether she had failed to notify the appropriate authorities and agencies of her change of address.

The DEC, however, found that respondent failed to take adequate steps to protect the interests of her clients and other interested parties in connection with the termination of her practice in October 2002. The DEC concluded that her failure to so act resulted in her not receiving the fourth order to show cause.

The DEC also found that respondent failed to cooperate with the DEC investigation. The DEC found the presenter's "emphatic" denial that she instructed respondent to delay or suspend replying to the grievance more believable than respondent's assertion that the presenter instructed her to do just that.

In sum, the DEC concluded that respondent's failure to take appropriate measures to close her Watchung office constituted gross neglect as it delayed the resolution of the Stout appeal. Based on this factor, it also found that her conduct included a lack of diligence and failure to expedite litigation. Finally, the DEC found that respondent's failure to cooperate with the DEC investigation violated R.1:20-3(g)(3) (a violation of RPC 8.1(b)). The DEC did not dispose of the charge that respondent's conduct was prejudicial to the administration of justice.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence. However, we find that many crucial factual elements are missing from this case. For example, the record does not establish when the Appellate Section of the OPD became aware that respondent moved her practice, or whether it was aware that she ultimately closed her practice. The record does not indicate where the Stout matter was mailed, and whether it was returned to the OPD as undeliverable, or whether the scheduling order and/or the

April 10 and May 16 orders to show cause were returned as undeliverable. The record does not address what steps, if any, respondent took to have her mail forwarded and, if she did not have her mail forwarded, why not.

What is known is that eventually the court learned that respondent was no longer at the Vauxhall address. Therefore, the October 9, 2002 order to show cause was sent to respondent's prior address at Vauxhall, as well as her address in Watchung. However, according to respondent's answer, she had already closed her Watchung office. The record further establishes that, as required pursuant to R.1:28-2, respondent had informed the Fund of her new office location.

Given the absence of critical information, there is no clear and convincing evidence in the record that respondent was aware that the Stout case had been assigned to her. Therefore, we dismiss the charges of gross neglect, lack of diligence, and failure to expedite litigation, which relate to the handling of client matters. Likewise, because there is no clear and convincing evidence that respondent was aware of the orders to show cause, we dismiss the charge of conduct prejudicial to the administration of justice.

The only remaining charge is the violation of RPC 8.1(b). The DEC found that the presenter's statement that she instructed respondent to file a reply to the grievance was more believable

than respondent's assertion that she was told to wait until she learned of the outcome of another complaint against her. We find, thus, that respondent failed to reply to requests for information from a disciplinary authority. In addition, respondent was obligated, pursuant to R.1:20-6(c)(2)(D), to appear at the DEC hearing. She failed to do so. In both instances, therefore, respondent violated RPC 8.1(b).

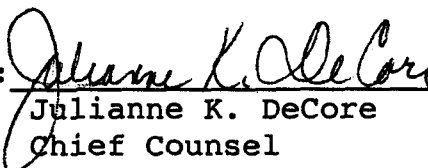
The only issue left for our determination is the quantum of discipline. In matters involving a failure to cooperate with disciplinary authorities, either admonitions or reprimands have been imposed. See In the Matter of Wesley S. Rowniewski, DRB Docket No. 01-335 (January 10, 2002) (admonition for failure to reply to a grievance and failure to file a timely answer to the complaint, resulting in the matter proceeding as a default); In the Matter of Andrew T. Brasno, Docket No. DRB 96-090 (April 19, 1996) (admonition for failure to reply to the ethics investigator's request for information); In re Cubberley, Docket No. DRB 96-090 (April 19, 1996) (admonition for failure to cooperate with disciplinary authorities); In re Wood, 175 N.J. 586 (2003) (reprimand for failure to cooperate with disciplinary authorities; attorney had prior admonition for similar misconduct); In re Leff, 174 N.J. 508 (2002) (reprimand for failure to communicate with clients and failure cooperate with disciplinary authorities); In re Brooks, 157 N.J. 640 (1999)

(reprimand for failure to cooperate with disciplinary authorities in several matters); In re Williamson, 152 N.J. 489 (1998) (reprimand for failure to cooperate with disciplinary authorities); In re Vedatsky, 138 N.J. 173 (1994) (reprimand for failure to cooperate with the district ethics committee); and In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the Office of Attorney Ethics).

As noted above, this is not respondent's first brush with the ethics system. Only last year she was reprimanded for conduct that included a failure to cooperate with disciplinary authorities. Respondent's conduct is, thus, similar to the second Wood matter, where a reprimand was imposed for her second violation of RPC 8.1(b). We, therefore, determine that a reprimand is the appropriate discipline for respondent's failure to cooperate with the DEC. One member did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

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

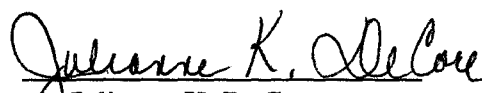
In the Matter of Deborah A. Pierce
Docket No. DRB 04-095

Argued: May 20, 2004

Decided: June 21, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>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:			8				1


Julianne K. DeCore
Chief Counsel