

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-324

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

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

Decided: February 18, 2004

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

Pursuant to *Rule* 1:20-4(f), the District IIIA Ethics Committee (“DEC”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1980. In 2000, she admitted violations of *RPC* 1.3 (lack of diligence) in one matter and *RPC* 1.4(a) (failure to communicate with a client) in two matters. The matter was diverted, pursuant to *Rule* 1:20-3(i)(2)(B)(i). Respondent agreed to pay \$225 to one client and \$4,200 to another client. She also agreed to a substance abuse evaluation by the New Jersey Lawyers' Assistance Program and to attend the New Jersey State Bar Association ethics diversionary program. On February 6, 2003, she was temporarily suspended for failure to comply with a fee arbitration determination. *In re Dupre*, 175 N.J. 533 (2003). She remains suspended to date.

On May 13, 2003, the DEC sent a complaint by regular and certified mail to respondent's last known address: 530 Ocean Heights Avenue, Pomona, New Jersey 08240. The certified mail envelope was returned to the DEC marked "unclaimed." The regular mail was not returned. On July 23, 2003, the DEC sent a letter by regular mail 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 the Board 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. The regular mail was not returned.

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

On September 28, 2001, Christopher Pate retained respondent to file a petition for expungement. Pate paid respondent a fee of \$600. After several months lapsed without any contact from respondent, Pate left numerous messages for respondent. She failed to reply to most of his inquiries about the status of the expungement petition. After Pate requested in writing the return of the \$600 fee, respondent informed Pate that she had filed the expungement petition. About seven months after he retained respondent, Pate learned from the court clerk that the petition had never been filed. Pate retrieved his records and filed a *pro se* expungement petition.

In April 2002, Pate filed a fee arbitration request. Respondent neither filed a response to the fee arbitration request nor attended the hearing. The fee arbitration committee entered a determination awarding Pate a refund of the entire \$600 fee and referred the matter to the DEC. After entry of the fee arbitration determination, respondent tried to convince Pate to compromise the arbitration award, alleging that she had incurred expenses due to his having filed the fee arbitration petition. Respondent's failure to satisfy this fee arbitration award resulted in her temporary suspension, as mentioned above.

The complaint further alleges that respondent failed to cooperate with the DEC investigator throughout the investigation.

The complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to communicate with a client), *RPC* 3.2 (failure to expedite litigation), *Rule* 1:20-3(g)(3) (failure to cooperate with disciplinary authorities, more

appropriately a violation of *RPC* 8.1(b)), 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 found that the facts recited in the complaint support the charges of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. *Rule* 1:20-4(f). After accepting a fee to file an expungement petition, respondent failed to do so, in violation of *RPC* 1.1(a) and *RPC* 1.3. Respondent failed to reply to Pate's inquiries about the matter, in violation of *RPC* 1.4(a), and misrepresented that she had filed the expungement petition, in violation of *RPC* 8.4(c). We dismissed the charge involving *RPC* 3.2 because respondent did not fail to expedite litigation, she failed to institute litigation.

In addition, respondent failed to cooperate with the DEC investigator or to file an answer to the complaint, in violation of *RPC* 8.1(b).

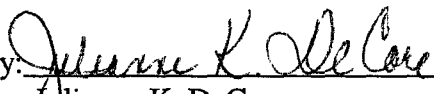
The remaining issue is the quantum of discipline to be imposed. In cases involving similar violations, three-month suspensions have been imposed. *See, e.g., In re Bernstein*, 144 *N.J.* 369 (1996) (attorney received a three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate with a client, misrepresentation, and failure to cooperate with the disciplinary authorities); *In re Weinstein*, 144 *N.J.* 367 (1996) (attorney received a three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, misrepresentation, and failure to cooperate with the disciplinary authorities; although not a default case, the attorney failed to appear at the ethics hearing); *In re Ortopan*, 143 *N.J.* 586 (1996) (three-month suspension imposed on an attorney who lacked

diligence, failed to communicate with a client, failed to protect a client's interest upon termination of representation, and failed to cooperate with the disciplinary authorities; the attorney failed to appear at the ethics hearing); *In re Kates*, 137 N.J. 102 (1994) (three-month suspension imposed on an attorney for lack of diligence, failure to communicate with a client, and failure to cooperate with the disciplinary authorities).

For respondent's infractions, we unanimously voted to impose a three-month suspension, to commence upon the termination of her temporary suspension for failure to comply with the fee arbitration determination. Before she is reinstated, respondent must demonstrate proof of fitness to practice law, as attested to by a mental health professional approved by the Office of Attorney Ethics. One member recused herself. Three members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

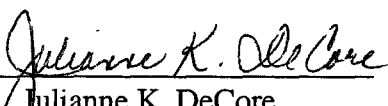
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Barbara H. Dupre
Docket No. DRB 03-324

Decided: February 18, 2004

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month 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:		5				1	3


 Julianne K. DeCore
 Chief Counsel