

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1130, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 142 DB 2004
v.	:	
	:	Attorney Registration No. 35665
VIVIAN A. SYE-PAYNE	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF  
THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES  
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On October 1, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Vivian Sye-Payne, Respondent. The Petition charged Respondent with numerous violations of the Rules of Professional Conduct in four domestic relations matters, including failing to appear in court on clients’ behalf, failing to communicate with

clients, failing to return unearned fees and related misconduct. Respondent filed an Answer to Petition for Discipline on October 19, 2004.

A disciplinary hearing was held on March 29, 2005, before a District I Hearing Committee comprised of Chair Michael D. Schaff, Esquire, and Members Alexander B. Giacobetti, Esquire, and Thomas M. Gallagher, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 15, 2005, finding that Respondent engaged in professional misconduct and recommending that she receive a suspension of three months followed by one year of probation.

Respondent filed a Brief on Exceptions on September 8, 2005, and requested oral argument.

Petitioner filed a Brief on Exceptions on September 13, 2005.

Oral argument was held on October 31, 2005, before a three member panel of the Disciplinary Board chaired by Min S. Suh, Esquire, with Marc S. Raspanti, Esquire, and Louis N. Teti, Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting on November 9, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Vivian Sye-Payne, was born in 1947 and was admitted to practice law in the Commonwealth in 1981. She maintains an office for the practice of law at 21 South 12<sup>th</sup> Street, Suite 1001, Philadelphia PA 19107. She is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior record of discipline consisting of an informal admonition in 1993, and private reprimands in 1994 and 1999.

Charge I - Stephanie D. Starling Matter

4. On March 2, 2003, Stephanie D. Starling consulted with Respondent about representing her in a child support matter pending in the Family Court Division of the Court of Common Pleas of Philadelphia County.

5. Respondent gave Ms. Starling a fee agreement to review that set forth the basis and rate of her fee; and Respondent explained that the fee would be \$1,500

because she anticipated a one-day hearing. Ms. Starling gave Respondent a check for \$1,000 and agreed to pay Respondent the remaining portion of the fee the following day.

6. On March 3, 2004, Respondent appeared in court on behalf of Ms. Starling, at which time Respondent received \$500 in cash from her client and the court continued the case for opposing counsel to file a motion for a semi-protracted support hearing.

7. On March 8, 2004, opposing counsel filed a motion for a semi-protracted hearing.

8. On March 25, 2004, oral argument was heard before Judge Nina Wright-Padilla on the motion.

9. Respondent attended the oral argument.

10. Judge Wright-Padilla granted the motion and scheduled the hearing for June 23, 2004.

11. Respondent received a distribution cover letter attaching a copy of the Judge's Order for a semi-protracted hearing on June 23, 2004.

12. From time to time Ms. Starling would call Respondent's office and send correspondence regarding the June 23, 2004 hearing.

13. Ms. Starling left Respondent voice messages and sent faxes reminding Respondent of the support hearing scheduled for 9:00 a.m. on June 23, 2004.

14. Ms. Starling sent Respondent her current 2003 income and expense information ordered for the scheduled hearing.

15. Ms. Starling visited Respondent's office on the afternoon of June 22, 2004, but the office was not open.

16. Ms. Starling left a copy of the proposed Settlement Agreement at Respondent's office.

17. On the morning of June 23, 2004, Ms. Starling left voice messages and text messages on Respondent's cellular telephone requesting that Respondent contact her as soon as possible about the hearing.

18. Respondent failed to appear in Family Court on June 23, 2004 to represent Ms. Starling.

19. Ms. Starling proceeded without any legal representation.

20. The Family Court judge entered a final child support order.

21. Respondent failed to communicate with Ms. Starling after the child support hearing.

22. On September 17, 2004, Ms. Starling sent a certified letter to Respondent wherein she:

a. explained that she paid Respondent \$1,500 to represent her in an interstate child support case;

b. stated that on numerous occasions prior to and including June 23, 2004, Ms. Starling left messages and Respondent failed to return her calls; and,

c. requested a refund of the unearned portion of the fee.

23. On three occasions the U.S. Postal Service attempted to deliver the certified letter to Respondent, but Respondent failed to claim the letter.

24. Respondent did not return any portion of the fee to Ms. Starling.

#### Charge II – Mazie Wood Matter

25. On July 25, 2000, the Family Court of Philadelphia County awarded temporary physical and legal custody of Gregory, Geoffrey and Brittany Daniels to their paternal grandmother, Cora Bell Daniels-Everette.

26. In April 2002, Mazie Wood, maternal grandmother of the Daniels children, requested that Respondent represent her in obtaining custody of her grandchildren.

27. By letter dated May 2, 2002, Respondent acknowledged receipt of money orders from Ms. Wood, totaling \$1,250, to be applied to Respondent's retainer.

28. During the course of representation, Ms. Wood paid Respondent by money orders totaling \$2,500.

29. Respondent did not hold the money separate from her own property until earned.

30. On May 17, 2002, Respondent filed a Complaint to Modify Custody in Family Court.

31. On September 11, 2002, Respondent:

- i. Met with her client as well as Janet Wood and Jerry Wood about the pending petition;
- ii. Went to Family Court with Ms. Wood for a hearing with Judge Robert J. Matthews on the petition;
- iii. Informed Ms. Wood that the matter was continued for a status listing on November 25, 2002.

32. Respondent told her client that she did not have to attend the November 25, 2002 hearing.

33. Respondent failed to appear in court on November 25, 2002.

34. Due to lack of prosecution, on November 25, 2002, the Family Court dismissed, without prejudice, Ms. Wood's Petition to Modify Custody.

35. On November 25, 2002, the Family Court awarded to Cora Bell Daniels-Everette permanent custody of the Daniels children.

36. Respondent failed to promptly inform Ms. Wood that her Petition to Modify Custody was dismissed for lack of prosecution.

37. From about December 2002 to July 2003, Ms. Wood called Respondent regularly to find out the status of her custody petition.

38. Respondent failed to return Ms. Wood's telephone calls.

39. On July 21, 2003, Ms. Wood called and spoke to Respondent about the custody petition, at which time Respondent;

- i. Apologized for not acting on the petition;

ii. Explained that she had been in a car accident and had been ill with shingles;

iii. Agreed to take action to reinstate the custody petition.

40. Respondent failed to act, in any way, to have Ms. Wood's custody petition reinstated.

41. By letter dated October 5, 2003, Ms. Wood and Janet Wood wrote to Respondent complaining that Respondent had not kept them informed about important developments in their case and inquiring about its current status.

42. Respondent received the letter but did not respond to it.

43. Since the summer of 2003, Respondent failed to communicate in any way with her client, Ms. Wood.

44. On March 9, 2004, new counsel for Ms. Wood requested that Respondent return the unearned portion of her fee.

45. Respondent failed to return any unearned monies to Ms. Wood.

46. Respondent failed to maintain complete records of her account funds in the Mazie Wood matter.

#### Charge III – Theron Barrett Matter

47. On January 16, 2003, Respondent met with Theron Barrett about filing a petition to modify his child support payments in the matter of Tamisha Stafford-Morrell v. Theron A. Barrett.

48. Mr. Barrett paid Respondent a \$100 consultation fee.

49. Respondent agreed to represent Mr. Barrett and gave him a written fee agreement, which Mr. Barrett signed.

50. On January 17, 2003, Respondent received a \$1,500 retainer fee check from Mr. Barrett.

51. Respondent endorsed the check but did not deposit it in an escrow account and hold it until earned.

52. Respondent failed to file with the Domestic Relations Division of Family Court a petition to modify Mr. Barrett's child support payments.

53. On February 12, 2003, Respondent was scheduled to represent Mr. Barrett in court regarding the child support payments.

54. Respondent failed to appear.

55. Respondent failed to inform Mr. Barrett that she had a conflict on that date, that she might be in another courtroom when his case was called, and that he should wait for her before proceeding to the hearing.

56. As a result of Respondent's failure to appear, Mr. Barrett was unrepresented at the child support hearing.

57. On February 13, 2003, Mr. Barrett spoke to Respondent by telephone and during that conversation Respondent agreed to refund Mr. Barrett's \$1,500 retainer fee.

58. Thereafter Respondent did not return any of Mr. Barrett's telephone calls.

59. By certified letter dated March 21, 2003, Mr. Barrett wrote to Respondent and stated that she:

- i. Failed to appear at the hearing;
- ii. Failed to inform him that she would not be present at the hearing;
- iii. Failed to refund the \$1,500 retainer fee; and
- iv. Failed to return his telephone calls.

60. Respondent did not claim Mr. Barrett's March 21, 2003 certified letter.

61. By certified letter addressed to Respondent, mailed on July 1, 2003, Mr. Barrett wrote requesting a refund of his \$1,500.

62. Respondent did not claim this certified letter.

63. Respondent failed to refund the unearned portion of her fee to Mr. Barrett.

#### Charge IV – Mary Osuagwu Matter

64. On July 21, 1999, Mary Osuagwu hired Respondent to represent her in a divorce action filed on May 3, 1999.

65. Respondent provided Ms. Osuagwu with a written fee agreement, which stated that her fee for a divorce was "Basic retainer fee \$2,000.00, nonfundable [sic]."

66. Ms. Osuagwu signed the fee agreement on July 21, 1999.

67. Ms. Osuagwu paid Respondent a total of \$1,500 for her representation and \$170 for costs associated with the representation.

68. By letter dated September 10, 2002, to Respondent, Ms. Osuagwu terminated Respondent's representation due to her belief that Respondent failed to proceed with the divorce petition. She requested that Respondent forward her file to her new attorney, [ ] Maltzman, Esquire.

69. Respondent received the letter but failed to forward Ms. Osuagwu's file to her new attorney.

70. By letter of October 11, 2002, Mr. Maltzman wrote to Respondent requesting that she forward the file to his office.

71. Respondent failed to forward Ms. Osuagwu's file to Mr. Maltzman.

72. Mr. Maltzman sent another letter to Respondent on December 2, 2002 and again Respondent failed to forward the file.

73. By letter dated December 30, 2002, Mr. Maltzman stated that he had received no response regarding his several requests for Ms. Osuagwu's file and informed Respondent that it was imperative that he immediately receive a copy of the file, as he was proceeding to discovery.

74. Ms. Osuagwu sent a certified letter to Respondent dated January 5, 2003, in which she:

i. stated she had contacted Respondent's office in December 2002 and Respondent's agent told her that she owed in excess of \$3,500 and her file would not be released unless she paid the money;

ii. requested that Respondent forward to her, within ten business days, an invoice with the alleged outstanding balance;

iii. requested that Respondent contact her, via letter or telephone, as to when she could retrieve the file from Respondent's office;  
and

iv. informed Respondent that her conduct was causing unwarranted delays.

75. Respondent failed to claim the January 5, 2003 certified letter.

76. Ms. Osuagwu sent a certified letter on March 29, 2003, restating her dissatisfaction with Respondent and her request for her file.

77. As a result of Respondent's failure to release Ms. Osuagwu's file to Mr. Maltzman, the case was delayed and Ms. Osuagwu incurred additional costs.

78. Office of Disciplinary Counsel sent Respondent a letter on May 12, 2003 regarding Ms. Osuagwu's complaint.

79. Ms. Osuagwu was able to retrieve her file from Respondent's office on May 26, 2003.

#### Other Findings

80. Respondent has default judgments entered against her for non-payment of rent, failure to provide legal services and return an unearned fee, and failure to pay her dentist.

81. Respondent blamed the court for not providing her with the correct time for Ms. Starling's hearing; she blamed Mr. Barrett for proceeding to the hearing without waiting for her; she blamed the court for dismissing Ms. Wood's case when she failed to appear, and she blamed Ms. Osuagwu for not paying her fee.

82. Respondent has made no effort to return the unearned portion of her fee to her clients, even after being apprised of the instant disciplinary proceedings.

83. Respondent's escrow account bears the name of her non-attorney, estranged husband. She has made no effort to remove her husband's name from the account despite being instructed to do so by Office of Disciplinary Counsel.

84. Respondent presented character witnesses at the hearing.

85. Milton Savage, Esquire, and Rhonda Hill Wilson, Esquire, are attorneys who practice law in Philadelphia and have known Respondent for many years.

86. Mr. Savage and Ms. Wilson testified to Respondent's excellent reputation in the community as a truthful and honest person.

87. Michelle McDowell and Meldora Miles are former clients of Respondent who were very satisfied with Respondent's representation of them.

88. Sharon Vaughan has known Respondent for fifteen years and has referred people to Respondent and testified that Respondent handled the cases in a professional manner.

89. Respondent has been a sole practitioner for the majority of her career, with an emphasis on domestic and family law.

90. Respondent was involved in a motor vehicle accident in January 2003 and injured her back. She was not able to work a regular schedule for a substantial period of time. Respondent developed shingles in March 2003 and was out of her office for intermittent periods of time.

### III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

3. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

4. RPC 1.15(a) – A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property.

5. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive, and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

6. RPC 1.16(a)(2) – A lawyer shall withdraw from the representation of a client if the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.

7. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with professional misconduct in four separate matters. Petitioner has

the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Review of the record demonstrates that Petitioner met its burden of proof. The hearing testimony, joint stipulations, exhibits and reasonable inferences therefrom support the Rules violations charged in the Petition for Discipline.

In the Starling matter, Respondent failed to act with reasonable diligence in representing her client in a child support matter. Respondent received notice from the court of a hearing scheduled for June 23, 2004. Additionally, Respondent's client left messages about the date and time of the hearing. Despite receiving multiple notices of the date and time of the hearing, Respondent failed to attend. Respondent attempted to explain her lack of diligence by testifying that she believed the hearing was at 1:00 p.m. and that she never received notice from the court or her client that the hearing was at 9:00 a.m. The evidence belies this explanation. Respondent's failure to appear at Ms. Starling's hearing was due to her own irresponsibility. Furthermore, Respondent failed to communicate with Ms. Starling and failed to refund the unearned portion of her fee.

Respondent's conduct in the Wood, Barret and Osuagwu matters is very similar to that of the Starling matter. Respondent failed to appear for hearings, failed to communicate with her clients, did not refund unearned monies, failed to return client files and engaged in general client neglect. This pattern of neglect occurred over a period of two years, starting in approximately 2002.

Respondent has a history of professional misconduct. She received an

informal admonition in 1993 and private reprimands in 1994 and 1999 for similar misconduct. This latest activity appears to be a continuation of prior bad practice habits.

Respondent did not exhibit recognition of her wrongdoing and instead placed blame on either the court system or her clients. Her description of her office management procedures sheds light on Respondent's inaction in her cases. For example, her attitude toward her certified letters is that if she is not in her office when such a letter is delivered, she does not have time to go to the post office and retrieve it. Respondent mishandled her bank accounts, depositing her retainer fees into her personal account and failing to maintain those fees. Oddly, Respondent placed her estranged husband's name as a signatory on the account. Respondent's husband is not an attorney and has been separated from Respondent for at least twelve years. Respondent then delayed in producing bank records requiring Petitioner to issue a subpoena and hold a hearing, certainly a waste of the resources of this disciplinary system. Finally, Respondent indicated that she may be moving her office and has no idea where it will be in the future.

Respondent offered evidence of her involvement in a car accident in January 2003 and a bout with shingles in March 2003 to explain some of her law practice problems. Respondent was out of her office intermittently due to these health issues, but in any event she cannot attribute her poor performance to her poor health. In further mitigation, Respondent presented character witnesses. Although the witnesses were unaware of the specific nature of the charges underlying the disciplinary hearing, they all had a favorable

understanding of Respondent's good reputation in the community for truthfulness and honesty.

Respondent's pattern of neglect in four client matters, coupled with her prior record of discipline, failure to accept responsibility for her wrongdoing, and mismanaged law practice necessitate a suspension from the practice of law for one year and one day. Precedent establishes that attorneys who engage in multiple acts of client neglect and who have a prior record of discipline are candidates for suspension of one year and one day. See Office of Disciplinary Counsel v. Sieger, 60 Pa. D. & C. 4<sup>th</sup> 522 (2001), Office of Disciplinary Counsel v. Michael G. Bowen, 960 Disciplinary Docket No. 3 (Pa. Oct. 22, 2004). In the instant matter, imposing a suspension on Respondent that requires her to go through a reinstatement proceeding and prove her fitness is imperative. Respondent must be able to manage her case load and law office properly if she wishes to avoid further disciplinary complications in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Vivian A. Sye-Payne, be suspended from the practice of law for a period of one year and one day

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By: \_\_\_\_\_  
Min S. Suh, Board Member

Date: February 13, 2006

Board Member Newman did not participate in the decision of this matter.

PER CURIAM:

AND NOW, this 17<sup>th</sup> day of April, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 13, 2006, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied pursuant to rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that VIVIAN A. SYE-PAYNE be and she is SUSPENDED from the Bar of this Commonwealth for a period of one year and one day, and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Madam Justice Baldwin would impose a nine-month suspension and one-year probation with a practice monitor.