SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-136
District Docket Nos. XIV-2008-0588E, XIV-2009-0099E, XIV-2009-0598E and XIV-2010-0462E

IN THE MATTER OF

CHERYL H. PICKER

AN ATTORNEY AT LAW

Decision

Argued: July 19, 2012

Decided: October 17, 2012

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance at oral argument.

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

This matter came before us on a recommendation for a three-month suspension (with sixty days of that suspension suspended) filed by Special Ethics Master Bernard A. Kuttner. The special master also recommended that respondent be required to demonstrate proof of fitness, before she is reinstated.

The six-count amended complaint, filed by the Office of Attorney Ethics (OAE), charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.16(c) (failure to continue representation when ordered to do so by a tribunal, notwithstanding good cause for terminating the representation), RPC 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal), and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count one); RPC 1.1(a), RPC 8.1(b) (failure to cooperate with a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count two); RPC 3.4(c) and RPC 8.4(d) (count three); RPC 1.1(a), RPC 3.4(c), RPC 8.1(b), and RPC 8.4(d) (count four); RPC 1.1(a), RPC 1.4(a) (failure to inform a prospective client of how, when, and where the client may communicate with the lawyer), RPC 1.4(b) (failure to communicate with a client), RPC 1.5(b) (failure to set forth in writing the basis or rate of a fee), RPC 1.5(a) (unreasonable fee), RPC 1.16(d) (failure to protect client's interest upon termination of the representation), RPC 7.1(a)(2) (false or misleading communication creating unjustified expectation about results the lawyer can achieve), and RPC 8.4(c) (count five); and RPC 1.1(b) (pattern of neglect) (count six).

On January 13, 2012, the OAE withdrew the two RPC 8.4(c) charges (counts two and five) and the RPC 1.5(b) charge (count

five). The OAE recommended a suspension of three to six months. For the reasons expressed below, we determine that a three-month suspension is the appropriate sanction for respondent's infractions.

Respondent was admitted to the New Jersey bar in 1988. She has no history of final discipline. She was temporarily suspended, on November 23, 2009, for failure to comply with a fee arbitration award. In re Picker, 200 N.J. 438 (2009). She was reinstated approximately three weeks later. In re Picker, ___ N.J. ___ (2009).

**Count One – Jones/Lester**

On April 14, 2008, Cynthia Jones retained respondent to represent her son, Earl Lester, who had been charged with possession with intent to distribute a controlled dangerous substance, while an inmate at South Woods State Prison in Bridgeton, Cumberland County. The retainer agreement provided for a fixed $5,000 fee, $1,000 of which was paid at the time the agreement was signed. In addition, based on Lester's heroin addiction, the retainer agreement contemplated the possibility of a motion to transfer custody to an in-patient drug facility. Respondent's fee for the motion to change custody was $3,500, plus all costs, including the fees of expert witnesses.

In the retainer agreement, which contained detailed information about the case, respondent asserted that, although Lester had been assigned a female public defender who "heads that county's Drug Court," the public defender had not visited Lester.

On September 2, 2008, respondent failed to appear at a status conference in the Lester matter, at the Bridgeton courthouse. In a September 4, 2008 letter, John M. Waters, Jr., J.S.C., confirmed a September 3, 2008 telephone conversation with respondent, in which he advised her that, based on her failure to appear on September 2, 2008, the status conference had been postponed to September 15, 2008. The letter was addressed to respondent's office/residence, located at 17 Olsen Drive, Warren, New Jersey, and indicated that it was also transmitted by facsimile.

At the ethics hearing, respondent testified that, pursuant to an arrangement with Judge Waters, he knew that she was not going to appear on September 2, 2008. She also testified inconsistently, however, that she had appeared on September 2, 2008.

On September 15, 2008, respondent attended the status conference before Judge Waters.

In October 2008, respondent submitted a letter to Judge Waters, with a copy to both Lester and Jones, requesting that he relieve her as Lester's counsel, due to non-payment of both her fee

and the cost of a drug evaluation.[1] In that letter, respondent opined that Lester had enough time to "(re)obtain the services of Public Defender, Dinaz Ahktar, Esquire, who was doing an excellent job on this case." Respondent further stated that she could no longer attend or be responsible for a scheduled hearing, in November 2008. Finally, she questioned why Lester and Jones had terminated Ahktar's services, given that the public defender's office provides drug evaluations and expert witnesses at no cost to the client.

On October 30, 2008, Judge Waters signed an order denying respondent's request to be relieved as counsel. Also on October 30, 2008, Judge Waters sent a letter to respondent (1) explaining that her application to withdraw, the basis of which he characterized as a fee dispute, had been denied without prejudice; (2) referring her to R. 1:11-2(a)(2), which sets forth the requirements for motions to withdraw, after the entry of a plea in a criminal action; and (3) noting that the next scheduled court event was a status conference to be held on November 17, 2008.

Respondent failed to appear at the November 17, 2008 status conference. At the ethics hearing, Judge Waters testified, by telephone, that he had made it clear to respondent, in his prior communication, that the fee issue was not of concern to him and

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[1] Respondent's letter did not indicate that she had served a copy on the prosecutor's office.

that he had expected her to appear in court until she was relieved as counsel.

On November 18, 2008, at 4:00 p.m., respondent faxed to Judge Waters' chambers a five-page letter, dated November 17, 2008, reiterating the fee issue and complaining that Jones had refused to pay for her next scheduled court appearance in Bridgeton. In that letter, respondent noted several times that her travel to and from Bridgeton required almost three hours in each direction. Respondent also accused Jones of fraud and "despicable, scheming acts of purposeful lack of communication." In addition, in the November 17, 2008 letter to Judge Waters, respondent revealed that Lester and his girlfriend had engaged in a scheme whereby his girlfriend would smuggle heroin to Lester in the prison and that this information had been obtained by law enforcement authorities by means of a legal wiretap.[2]

On November 20, 2008, the OAE received a letter from Judge Waters, indicating that respondent had failed to appear at several court events and expressing concern about her ability to represent her client.

On December 18, 2008, Judge Waters sent a letter to respondent, by fax and regular mail, informing her that he had notified the OAE of her failures to appear in court. Judge Waters

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[2] The complaint did not charge respondent with any ethics infractions in connection with this disclosure.

cautioned respondent that he intended to impose sanctions, if she failed to appear for the next court session, scheduled for January 5, 2009. He also told respondent that he had directed Lester to apply for a public defender, implying that, if respondent filed a substitution of counsel and otherwise complied with R. 1:11-2(a)(2), the public defender's office would assume responsibility for the case.

Respondent admitted that she failed to appear in court on January 5, 2009. According to OAE investigator Scott Fitz-Patrick, the public defender's office assumed representation of Lester.

Respondent sent a February 27, 2009 letter to Judge Waters, apologizing for her failure to appear at the November 17, 2008 status conference. In that letter, respondent claimed that she had not received the October 30, 2008 denial of her motion to withdraw and "incorrectly assumed that the two and one half hour commute each way from Northern Jersey to Bridgeton would not be necessary." Respondent further alleged that she believed that she was not required to attend the November 17, 2008 status conference, because Lester and Jones had refused to comply with the terms of the retainer agreement and because Lester had been hospitalized, after being assaulted in prison. Respondent explained in the letter:

> I did not appear for the status conference because I had not yet received the denial of my motion and given the five hours of commute

> necessary for the status conference the date of which I was also unaware, I did not attend.
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> [Ex.R-2].

Judge Waters' secretary indicated to Fitz-Patrick that the judge did not receive respondent's February 27, 2009 letter until April 13, 2009.

For her part, respondent asserted that she had been retained to represent Lester after receiving a telephone call from the Department of Corrections, indicating that Jones was seeking counsel for her son, Lester. Respondent speculated that she had received that call because she had visited Northern State Prison, in Newark, many times.

Respondent claimed that, on November 16, 2008, she had received permission from both the criminal case management team leader and Judge Waters' law clerk not to appear the next day at the status conference. According to respondent, she had explained to the law clerk and to the team leader that she had not yet secured an expert and that her client was in the hospital, after having been stabbed in prison. In addition, respondent denied having received Judge Waters' order denying her motion to withdraw from the Lester case. She claimed that, when she asked the team leader and the law clerk about the status of her motion, they replied that they did not have that information.

Respondent also denied having received Judge Waters' December 18, 2008 letter, although she acknowledged that it had been sent to her correct address in Warren.

Respondent asserted that she had provided an "enormous amount of services" to Lester, including visiting him at least four times at Northern State Prison, where he had been transferred, paying for discovery, researching the custody transfer application, and travelling to Cumberland County.[3]

**Count Two – Alston/Brown**

On February 8, 2008, Al-Tariq Brown retained respondent to represent him in a criminal matter. The retainer agreement provided that Lashonda Alston, Brown's girlfriend, was a guarantor of the fee. Alston did not sign the fee agreement. Although the retainer agreement provided for a fixed fee of $7,500, which included no more than three court appearances and did not include trial services, Alston understood that respondent's fee was to be $5,000, which was paid by Alston's mother and Brown's mother.

Alston never received a copy of a letter of appearance or any document indicating that respondent had provided legal services to Brown. In addition, Alston asserted that respondent had not returned numerous telephone messages. Alston surmised that

[3] During the ethics hearing, respondent disclosed that, in compliance with a fee arbitration committee award, she had refunded $7,500 to Jones.

respondent had refrained from taking her calls because she had recognized Alston's telephone number. When Alston contacted respondent using someone else's telephone, respondent answered the phone but then "hung up," when she discovered that Alston had placed the call.

At some point, Brown informed Alston that respondent had never visited him in prison, other than once, when she obtained his signature on the retainer agreement. He also told Alston that respondent "was not on his case" and directed her to contact the public defender. When Alston did so, she was told that no attorney was listed as counsel of record. The public defender agreed to represent Brown. On February 29, 2008, however, Alston retained another attorney, Bernardo Henry, to represent Brown.

Fitz-Patrick, too, testified that Brown had told him that he had no communications with respondent, after he signed the retainer agreement. Fitz-Patrick added that the public defender, Ann Sorrell, confirmed that respondent had never entered an appearance on Brown's behalf. Sorrell also confirmed that she had represented respondent from February 15, 2008 until Henry assumed the representation.

Also on February 29, 2008, respondent sent a letter to Alston and Brown concerning "the mutual decision to discontinue further legal representation as of February 27, 2008." In that letter, respondent asserted that, in accordance with the retainer

agreement, the failure to pay the entire $7,500 fee by February 15, 2008 established cause for her to terminate her legal services. She further indicated that, during the period of representation (less than one month), she had spent thirty hours on Brown's behalf, itemized as follows:

- Three hours – visit Brown at Essex County Correctional Facility.
- Twelve hours – research to ascertain from the public defender the crimes with which Brown was charged.
- Five hours – two office consultations and two office visits without appointments.[4]
- Six hours – telephone conferences with Brown, Alston, and other family members, including "harassing" telephone calls from Alston.
- Four hours – research "regarding times when Mr. Brown was represented by a public defender."

Respondent did not indicate the dates of the above services.

Respondent asserted that, although Brown and Alston had led her to believe that Brown had been charged with two counts of larceny and perhaps one count of robbery, when she appeared at his bail hearing, she discovered that bail had been set at $750,000, an indication that Brown had been charged with more serious crimes than had been disclosed to her. In addition, she said, two public defenders appeared at the bail hearing on Brown's behalf.

[4] It is undisputed that, during one of these unscheduled office visits, respondent was not present and Alston dealt with respondent's paralegal.

Respondent's subsequent discussions with those public defenders confirmed that Brown's criminal charges were very serious.

According to respondent, although she had tried to enter an appearance on Brown's behalf, she could not do so because a public defender had already entered an appearance.

As to discrepancies between Alston's and respondent's version of the facts, respondent testified that "everything [Alston] said was a lie."

On February 27, 2009, the OAE forwarded the Alston grievance to respondent. On April 20, 2009, Fitz-Patrick contacted respondent by telephone. Although, according to Fitz-Patrick, respondent acknowledged receipt of the grievance and indicated that she would reply to it, she did not. She denied telling Fitz-Patrick that she had received the grievance and that she would reply to it.

Respondent conjectured that she had not received the grievance because it had been sent to the wrong address. She asserted that, on January 31, 2009, she had moved from her Warren office/residence to her former husband's house, in Livingston, where she remained for only five days. Yet, when the OAE interviewed respondent on February 10, 2009, ten days after she had moved, that meeting took place at the Livingston location.

During the interview, respondent instructed the OAE to send mail to her at the Livingston address.[5]

On February 14, 2009, respondent moved to her current address, in South Orange.

**Count Three – IDRC**

On September 9, 2008, Warren Township Municipal Court Judge Mark S. Adler found respondent guilty of driving while intoxicated. In addition to suspending respondent's driver's license for ten months and imposing monetary penalties, Judge Adler ordered her to satisfy the requirements of the Intoxicated Driver Resource Center (IDRC), including the completion of a twelve-hour program. Respondent, as the defendant, signed the municipal court order, acknowledging receipt of the order, which provided:

> It is further ORDERED that the defendant satisfy the screening, evaluation, referral, program and fee requirements of the Intoxicated Driving Programs Unit and Intoxicated Driver Resource Center. Failure to satisfy those requirements will be reported to the court and will result in a two (2) day term of imprisonment in the county jail and an additional period of license suspension until such requirements are satisfied.

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[5] At the ethics hearing, respondent denied any prior notice of the February 10, 2009 OAE interview, specifically, the OAE's January 14, 2009 letter scheduling the interview. She accused the OAE of appearing unannounced, at the Livingston location. During the recorded interview with the OAE, however, she acknowledged having received the January 14, 2009 letter.

[Ex.P-14].

On February 23, 2009, the Somerset County IDRC notified the municipal court of respondent's noncompliance with the IDRC program. The notice indicated that a copy of the report had been sent to respondent, on January 27, 2009, and that another copy had been sent to her, simultaneously with the notice to the court. The address appearing on the notice was respondent's Warren address, where she resided until January 31, 2009.

On March 27, 2009, more than six months after respondent's conviction, the municipal court administrator sent her a letter to the Warren address, ordering her to appear in court, on April 14, 2009, for failing to report to the IDRC. The letter informed respondent that her failure to appear in court would result in the issuance of a warrant for her arrest.

Because respondent did not appear in court, as ordered, Judge Adler issued a bench warrant for her arrest, on April 20, 2009, setting bail at $2,500. Fitz-Patrick testified that, after he learned of the warrant, during his investigation, he notified respondent, who replied that she would take care of it.

At the ethics hearing, respondent claimed that she had not completed the IDRC requirements because her driver's license had been suspended and she "couldn't get there." She further claimed that, although she had signed the court order, it went "over [her] head" because "there was no alcohol or drugs involved so I guess

that's why it didn't sink in." She denied having received the March 27, 2009 letter ordering her to appear in court, noting that, by that time, she no longer lived in Warren, the address to which the letter had been sent.

Upon questioning by the special master, respondent testified that she had directed her attorney to notify the municipal court of her new address. She further claimed that, although she had asked her attorney to appeal her conviction, he had not. Respondent denied that Fitz-Patrick had alerted her to the outstanding bench warrant for her arrest.

Respondent was arrested, in April 2010, while at the Somerset County Courthouse with a client. After spending one night in jail, she arranged to attend the next available IDRC session, which she completed on May 24 and 25, 2010.

**Count Four – Harris/Scott**

In March 2008, Nicole Harris, who resided in Los Angeles, California, contacted respondent about filing a post-conviction relief application for her fiancé, Reginald Scott, an inmate at New Jersey State Prison. Respondent agreed to meet with Scott, at the prison, for a $350 consultation fee. According to Harris, although she wired the fee to respondent on April 7, 2008, respondent never met with Scott or took any action on his behalf.

On November 7, 2008, Harris filed a criminal complaint with the Warren Township Police Department alleging theft, based on respondent's acceptance of the fee and her failure to perform any services. The municipal court issued a summons, requiring respondent to appear in court on November 18, 2008. Because respondent failed to appear in court, a warrant was issued for her arrest. As in the Alston/Brown matter, although Fitz-Patrick asserted that he had told respondent about the warrant and that she had assured him that she would address it, respondent denied that that conversation had occurred. After her arrest on the bench warrant, respondent retained counsel and the matter was dismissed.

On February 27, 2009, the OAE sent the Harris grievance to respondent, along with the Alston/Brown grievance previously discussed. As in the Alston/Brown matter, although respondent told Fitz-Patrick that she had received the grievance and would reply to it, she did not do so.

For her part, respondent asserted that she had consulted with Scott by telephone, on March 20, 2008. At the ethics hearing, respondent introduced into evidence several pages of handwritten notes, as well as a printout of Scott's information maintained on the website of the Department of Corrections. Respondent asserted that they reflect part of her research. Respondent's handwritten notes contain virtually the same information appearing on the Department of Corrections website.

Respondent claimed that, based on her assessment that Scott's direct appeal and prior application for post-conviction relief had been denied, she had informed Harris that there was nothing that she could do and that she did not want to take any more of Harris' money.

**Count Five – Mario Flores**

On March 22, 2008, Mario Flores retained respondent in connection with a criminal matter. After pleading guilty to endangering the welfare of a child, Flores was sentenced, on January 25, 2002, to a five-year term of probation and community supervision for life (CSL). The judgment of conviction recited that the factual basis of the plea was Flores' admission that he had touched the back and bare buttocks of his fiancée's daughter, who was eleven years old. Because the crime was a Megan's law offense, Flores was required to obtain treatment and to register as a sex offender. He was a Tier 1 sex offender, a classification representing a "low risk of re-offense."

About seven years later, in 2009, Flores sought documents about his plea and conviction, due to an unrelated matter. At that time, he discovered that his report from the Adult Diagnostic and Treatment Center concluded that he was not eligible for sentencing under the New Jersey Sex Offender Act. He, thus, sought relief from the CSL requirement.

Flores asserted that, after posting a message on an internet website, seeking advice about his sentence, he received a telephone call from respondent, while he was out to dinner. Respondent told him that she had read his case and that she could help him. In an undated e-mail to Flores, respondent stated: "As I promised while you were eating in Cranford, I would send you my contact information."

In a March 8, 2008 e-mail, Flores thanked respondent for her quick response and mentioned that he had in his possession all paperwork involved in his case. He gave her some background information, including his current employment as a tax accountant for seven years in the same office.

In March 2008, during one of several dates that Flores met with respondent at her office/residence in Warren, he signed a retainer agreement. In that agreement, respondent represented that she would give "best efforts" to (1) seek to vacate the conviction by post-conviction relief; (2) obtain a ruling, in accordance with the Court's recent companion decisions in Johnson/Rosado,[6] that the proceeding had violated Flores' constitutional rights because not all of the penal consequences of his plea (the CSL requirement)

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[6] In State v. Johnson, 182 N.J. 232 (2005), and State v. Rosado, 182 N.J. 245 (2005), the Court reversed the sentences imposed on the defendants because, when they entered guilty pleas, they had not been informed of the mandatory period of parole supervision required by the No Early Release Act.

had appeared on the plea form; or (3) pursue a grant of clemency from the governor. The retainer agreement declared that there "is no guaranty as to the results of your case."

The retainer agreement provided for a fee of $7,500, to increase to $10,000 if a post-conviction relief brief were filed. Respondent stipulated that she had received $8,500 from Flores. The record does not explain why Flores paid $8,500, given the $7,500 fee quoted in the retainer agreement.

Notwithstanding the "no-guarantee" provision of the retainer agreement, on March 23, 2008, respondent sent the following e-mail to Flores:

> I thoroughly enjoyed meeting you last week and then again two days ago. I am certain that I will be able to help you in the percentile right below 100% b/c I am technically not permitted by the NJ Rules of Professional Conduct (RPCs) to guaranty the perfect result.
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> [Ex.P-22].

Flores asserted that, during his first meeting with respondent, he had provided her with copies of all of the documents pertaining to his case, including, but not limited to, his arrest, plea bargain, and disposition.

During the representation, Flores told respondent that he was concerned about losing his job. Respondent then signed a recommendation letter, dated August 1, 2008 and addressed to "To Whom It May Concern," indicating that she had known Flores for approximately two years and that he was "a man of honor and of

achievement in the profession of taxation and other areas related thereto." The letter further stated that Flores had been "unfairly targeted by the malicious prosecution of an overzealous Assistant Prosecutor."

According to Flores, he received no other correspondence from respondent. Although respondent told him that she was making trips to Trenton to discuss his case with "her connections" who were "in charge of the law regarding Megan's law," he saw no documentation indicating that she had performed any services on his behalf. Despite respondent's demands for more money, Flores stopped paying her additional fees, when he realized that he was not getting results.

Flores last met with respondent in November 2008. Thereafter, respondent told him that she would be moving her office, but never gave him her new contact information. Flores' subsequent attempts to reach respondent to determine the status of his matter were not successful. On February 27, 2009, Flores sent a letter to the Warren address, asking for respondent's new contact information and for an update on the status of his case. In that letter, Flores complained that his last contact with respondent had been during the prior November. Subsequently, on April 10, 2009, Flores sent an e-mail to respondent (sent to the same e-mail address from which he had received respondent's e-mails), indicating that he had not heard from her in months and again asking for a status

update and contact information. Flores received neither a reply nor a notice that his e-mail had not been delivered.

For her part, respondent claimed that Flores had initially contacted her by telephone and that she had offered him a free consultation. She denied that she had made the initial call to Flores, testifying that what "he said about that was a lie, you know, that I solicited him." According to respondent, during the consultation, Flores told her that he had been discharged at work. Respondent claimed that, although she had explained to Flores that she was not an employment lawyer, she had asked him why he had lost his job. When he replied that his discharge was based on his criminal conviction, she discussed the three possible avenues listed in the retainer agreement. On cross-examination, however, respondent acknowledged that, in Flores' first e-mail to her, he had indicated that he had been employed in the same job since 2001 and that he had not discussed a wrongful termination issue with her.

Respondent denied having guaranteed Flores a successful result, claiming that, the e-mail that she had sent him referring to the "100 percentile" meant that she would work "the maximum possible."

Respondent stated that she had met with Flores between eight and ten times. She alleged that she had performed an "enormous amount of research" on the Johnson/Rosado issue, indicating that

she had spoken with Michael Buncher, "the head of the sex offender unit of the entire State of New Jersey." She further claimed that she had contacted Robert Chan, the ombudsman for Governor Corzine. According to respondent, Chan had advised her that the governor would not grant clemency to a person convicted of a sex offense. Respondent introduced into evidence documents that she claimed represented some of the research and other work she had performed for Flores. These documents are nearly identical to those that Flores asserted he had given to respondent, during their first meeting.

During direct examination by her attorney at the ethics hearing, respondent explained how she had arrived at the conclusion that she could not assist Flores:

> Q. [D]id you come to some conclusion as to whether you could pursue the Johnson Rosato [sic] avenue of challenging the Megan's Law?
>
> A. Yeah, because not only doing my own research then I spoke to Michael Buncher after I did an enormous amount of research and I said I wanted PCR. He said . . . we're not prepared yet to file that constitutional challenge, that's all I can really say about it.
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> Q. Now, what about PCR? What about --
>
> A. It turned out that he was -- the deadline had passed for filing the PCR.[7]

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[7] In 2008, R. 3:22-12(a) provided that, although a petition for post-conviction relief must be filed within five years of the date of entry of the judgment of conviction, a petition to correct an illegal sentence may be filed at any time.

Q. So the three items that were set forth in the Retainer Agreement for your pursuit first was PCR, correct?

A. Yes.

Q. Could you pursue the PCR?

A. It was impossible.

Q. Because of?

A. The statute of limitations.

Q. The second avenue had to do with the Johnson Rosato [sic]?

A. Right.

Q. Could you pursue that or did you?

A. No, I was told not to actually.

Q. By whom?

A. By Michael Buncher because of what I said, the state was not prepared to enter a constitutional challenge.

Q. And did you explain that to Mr. Flores?

A. Yes, without going into reasons.

Q. The third aspect of the Retainer Agreement had to do with pursuing a grant of clemency.

A. I saw the people I needed to see. I also did a lot of research on it and if [sic] in the tiering process that goes along with the sex offenders, he was pretty highly tiered and there was no way that was going to happen.[8]

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[8] As previously noted, Flores was classified as Tier One, the lowest classification.

[2T163-12 to 165-2].[9]

During the ethics hearing, respondent asserted that she had held herself out as an experienced criminal attorney, adding that she was very familiar with Megan's law, had won many applications for post-conviction relief, held a graduate degree in criminology, and "was familiar with many people in Trenton." She acknowledged that, at the time of the retainer agreement, she knew that Flores had been sentenced on January 25, 2002. The following exchange with the presenter then took place:

> Q. So as an experienced criminal attorney, you would know that the time had already run for post conviction relief, correct?
>
> A. Sometimes you can file a second PCR, that's often done. . . . In this case he could not do a second PCR.[10]
>
> [3T30-25 to 3T31-4].[11]

As to the letter of recommendation that she had signed on Flores' behalf, respondent claimed that Flores had dictated most of it to her. Notwithstanding respondent's position that most of the contents of the letter were not true, she testified that she had signed it "to see if [Flores] was telling [her] the truth."

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[9] 2T refers to the transcript of the January 13, 2012 ethics hearing.

[10] Respondent offered no proof that a second post-conviction relief application may be filed in the absence of a first petition.

[11] 3T refers to the transcript of the January 19, 2012 ethics hearing.

Respondent denied having given the letter to Flores for his use, speculating that he had obtained it by removing it from her desk.

Respondent testified that, although Flores "kept wanting to give me money" in November 2008, when their relationship ended, she explained that she did not want any more money because she could not help him. She alleged that Flores had "asked [her] out several times" and had offered to help her move, when she had told him of her plans to relocate. In turn, Flores denied that he had made any advances toward respondent and, contrary to respondent's testimony, asserted that she had asked him to help her move, but that he had declined.

**Count Six – Pattern of Neglect**

Based on the charges of gross neglect in counts one, two, four, and five, the complaint also charged respondent with having engaged in a pattern of neglect.

**Mitigation**

In mitigation, respondent testified that, at the time that she represented Flores, she was involved in post-divorce proceedings and that, as a result of her divorce, she had accepted cases that she probably should not have. She asserted that she no longer accepts criminal cases, limiting her practice to civil appeals.

Respondent further advanced the following mitigating factors: (1) the absence of harm to clients; (2) restitution, based on the return of the retainer to Cynthia Jones, as ordered by the fee arbitration committee; and (3) cooperation with disciplinary authorities. She also contended that a suspension would be an undue hardship because she has four children, three of whom attend college.

**Respondent's Conduct at the Ethics Hearing**

In her letter-brief to the special master, the presenter recommended that respondent receive mental health treatment and counseling and that, as a condition of her reinstatement, she submit proof of fitness, based on "the unprofessional, unusual and disturbing behavior of the respondent during both her testimony and the testimony of adverse witnesses." The presenter asserted that, during the hearing, respondent called the grievants "liars," disregarded questions posed to her during her testimony, and "blurted out emotional self serving statements and diatribes against the grievants." As previously noted, the special master recommended that respondent demonstrate proof of fitness as a condition of her reinstatement.

The following excerpts from the transcripts provide examples of respondent's conduct at the ethics hearing, which is relevant to the issue of whether proof of fitness should be required:

During the presenter's direct examination of Alston:

> Presenter: I'm really distracted by the Respondent and is there any way that we can have her be quiet?
>
> Respondent: I'm just shocked by these answers. I apologize.
>
> [1T91-1 to 1T915][12]

Throughout her testimony, during both direct and cross-examination, respondent repeatedly either attempted to answer the question before it had been completely posed or gave an answer that was not responsive to the question. For example, the following exchange took place between respondent and her attorney:

> Q. Do you recall ever telling Mr. Fitz-Patrick --
>
> A. Yes, I told him I'm not going to say that I did any of this, I did not do what you're saying.
>
> Q. Cheryl, wait until the question. The question is this: The question about failure to cooperate relates to whether you received --
>
> A. I did not receive it, I've never received it, the complaint or whatever they are talking about, the grievance, I never received it.
>
> Q. That's the question. The question I have and I'd ask if you wait until I finish my question.
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> A. I'm sorry.
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> [2T124-23 to 2T125-14].

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[12] 1T refers to the transcript of the January 12, 2012 ethics hearing.

During cross-examination, the presenter questioned respondent about her failure to appear before Judge Waters in the Lester matter:

> Q. You saw notes relating to the Earl Lester case for each date, correct?
>
> A. It said that I didn't appear on the 17th, I already said that I didn't. What's the question?
>
> Q. If you will let me ask the question, I will, okay?
>
> A. That's as far as I went, that's all I'm saying. . . .
>
> Q. Yes, that's what the heading is on the page.
>
> A. I haven't heard that.
>
> Respondent's Counsel [RC]: I know you haven't because she hasn't asked the question.
>
> [2T189-2 to 2T189-20].

Shortly thereafter, respondent's demeanor during questioning by the presenter deteriorated:

> RC. Cheryl, let me do the objecting. It's okay.
>
> Special Master [SM]. It's proper impeachment.
>
> A. But I don't know who wrote that.
>
> RC. Let me do the objections.
>
> SM. Miss Haft Picker, just wait for the question. Your lawyer is very capable.
>
> . . .

Q. We could be here a really long time if you don't let me finish the questions.

. . .

Q. And your interview with Scott Fitz-Patrick on February 10th, 2009 was recorded, do you remember that?

A. Yeah, I remember a lot about that interview actually. . . .

Q. And you asked me to or Scott to resend a package that you had received but had put in storage, do you remember that?

A. I was moving.

Q. Do you remember that?

SM. Just answer the question.

A. I don't remember much of that interview.

. . .

Q. You knew that you were being interviewed by an investigator from the Office of Attorney Ethics, didn't you?

A. No, I did not. I had no clue.

Q. The page one of the interview begins by Mr. Fitz-Patrick saying "This will be the statement of Cheryl F. Picker --"

A. Find out that day.

Q. "-- taken on February 2, 2009 by Investigator M. Scott Fitz-Patrick."

A. I got blown away at that point. That's a good time to tell me at the meeting.

SM. Miss Picker, please.

A. I'm sorry.

> SM. Let Miss Kennedy ask her question.
>
> A. But she's being unfair.
>
> RC. If she's unfair, then I will object to the question.
>
> A. You need to object to it, Rubin.
>
> RC. I will object when it's an improper question. You need to respond to the questions that are asked. You need to respond --
>
> A. The Judge doesn't understand the circumstances of that meeting.
>
> RC. I will respond to the circumstances by asking a redirect question. It is not your role to deflect the question and --
>
> A. I agree with you on all this. I apologize, I'm just really upset.
>
> [2T192-12 to 2T203-7].

Although count two of the complaint alleged that respondent may have forged Alston's signature, the OAE withdrew that charge. The presenter, however, questioned respondent about that issue, for credibility purposes, resulting in the following exchanges:

> RC. Cheryl, there is no question pending. How many times can we say this to you? There is no question pending, the lawyers are in colloquy in order to focus the attention. For the fifth time you're going --
>
> A. I haven't received the $500 check. Why would they come to my house and threaten me to sign it over to them? No one is hearing this.
>
> SM. Miss Kennedy.
>
> A. This is crazy.
>
> [2T213-2 to 12].

. . .

A. No, I can't believe this stuff is coming back in, it's supposed to be dismissed all this.

Q. There is an issue of credibility, ma'am, that's all.

A. No, there is no issue.

RC. Cheryl, you're going to answer the question, you're not going to debate her, all right. You're going to answer the questions.

A. Wasn't this dismissed, Rubin? I thought this was all dismissed. You know.

RC. Cheryl.

A. Bring out the originals . . . I'm sorry, I gotta calm down.

[2T226-9 to 2T227-8].

Finally, while under direct examination by her own attorney, respondent had difficulty recalling her current address:

Q. What's the address in South Orange?

A. I'm sorry, Third Street, West Third Street.

SM. What's the address?

A. West Third Street, South Orange 07079.

Q. What's the full address?

A. I know, I got a blank on this, I apologize, 2838.

Q. Where do you presently reside?

SM. Wait a second. What's the full address of South Orange?

A. I just said I blanked on it, I apologize. I can't believe I'm forgetting my own address.

Q. For purposes of the record –

A. 2837, I'm sorry.

Q. Would it refresh your recollection –

A. I know where I live.

Q. Would it refresh your recollection if I were to show you your Verified answer to the Complaint?

A. Sure.

Q. Are you presently residing at the same location that is this address?

A. Yes.

Q. Showing you for purposes of refreshing your recollection a copy of your Verified Answer to the Complaint.

A. Okay.

Q. Does this refresh your recollection as to the address you moved to in February of 2009 and where you currently reside?

A. Right, I'm sorry, 28 West Third Street, South Orange. . . .

SM. One minute, please. Are you aware that you sent letters to Judge Waters for one that I have in front of me 28 West Third Street, West Orange, not South Orange?

A. No, it's South Orange. That says West Orange? It's South Orange.

SM. So I'm asking you the letter that you've entered in evidence or for identification by regular mail, you say you wrote Judge Waters and you gave your address as 28 West Third Street, West Orange.

A. That's an error then . . . It was a typo.

[2T127-3 to 2T129-14].

Moreover, throughout the proceedings, respondent accused the grievants of lying. As previously noted, she testified that everything that Alston had said at the hearing was a lie. In her reply to Flores' grievance, she accused him of "criminal perjury," based on the statements in his grievance. During the ethics hearing, she opined that Flores was a liar. She also accused Harris of lying. When discussing the withdrawn forgery charge and her reply to the grievance, respondent testified:

> By the way, your Honor, none of the time that I billed for any of this, this took days to respond to all of these people, they were lying about me.

[2T132-3 to 6].

The special master found that, in the Jones/Lester matter, respondent's testimony concerning her failure to appear before Judge Waters, on November 17, 2008, was not credible, particularly in light of the timing of the November 18, 2008 fax, which supported the allegation that she was aware of the November 17, 2008 scheduled status conference. The special master, thus, determined that respondent violated RPC 1.16(c) and RPC 8.4(d). He dismissed the charges of gross neglect (RPC 1.1(a)) and knowingly disobeying an obligation under the rules of a tribunal (RPC 3.4(c)).

As to the Alston/Brown matter, the special master found that, although it was questionable that respondent had rendered any services, beyond meeting with Brown in prison and meeting with Alston on one occasion, the evidence of gross neglect was not clear and convincing. He, therefore, dismissed that charge. Based on his finding that respondent had received the grievance, but had failed to reply to it, the special master found a violation of RPC 8.1(b).

With respect to count three, the special master noted that respondent had signed the municipal court order, requiring that she complete a twelve-hour IDRC program, and that OAE investigator Fitz-Patrick had notified her that a bench warrant had been issued for her arrest for failing to comply with the order. Although the special master determined that respondent violated RPC 8.4(d), he found that the evidence that respondent had knowingly disobeyed an obligation under the rules of a tribunal, while substantial, was not clear and convincing. He, thus, dismissed the RPC 3.4(c) charge.

In connection with the Harris/Scott matter, the special master, noting that Harris, the grievant, had not testified, determined to dismiss the gross neglect charge. The special master found that the notice to appear in municipal court in connection with the theft charge filed against respondent had been sent to the proper address. Finding that the theft complaint was "flawed,"

he dismissed the RPC 3.4(c) and RPC 8.4(d) charges arising out of her failure to appear in court, resulting in the issuance of a bench warrant for her arrest. The special master found, however, that respondent failed to cooperate with disciplinary authorities by receiving the grievance and not replying to it.

In the Flores matter, the special master found that respondent's e-mail describing the potential success rate as just below 100 percent was "imprudent and false" and a violation of RPC 7.1(a)(2). He also determined that respondent failed to communicate with Flores and to properly terminate the attorney-client relationship. Although the special master found substantial proof that respondent had not performed sufficient services to justify an $8,500 fee, he disagreed with the allegation that she had performed no services for Flores. In this regard, he noted that the case was complex and that the "charges against grievant did not make him a sympathetic defendant." The special master concluded that gross neglect had not been proven by clear and convincing evidence. He dismissed the remaining charges, RPC 1.4(a) and RPC 1.5(a), without citing them.

Although the special master did not address the pattern of neglect allegation in count six, presumably, he dismissed that charge, based on his rejection of all four of the gross neglect charges in the complaint.

The special master recommended that respondent be suspended for three months, suspending sixty days of that suspension, in recognition of her unblemished ethics history. He further recommended that her reinstatement be conditioned on proof of fitness, as attested by a mental health professional approved by the OAE. As to the proof of fitness component of his recommendation, the special master asserted that, although it was understandable for respondent's demeanor at the hearing to be "highly emotional," he was concerned about her stability and fitness to practice law.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In this case, respondent's conduct revealed a disturbing pattern that permeates most of the counts in the ethics complaint: she agreed to represent a criminal defendant, accepted a fee, performed little or no services, displayed a lack of knowledge about criminal practice and procedure, and resorted to blaming and criticizing the grievants after ethics charges had been filed against her.

In the Jones/Lester matter, respondent agreed to represent Lester, despite her knowledge that his case was venued in Cumberland County, a substantial distance from her Warren office. Respondent's strategy was to obtain an expert report indicating

that Lester was a heroin addict, thus supporting a motion to transfer him from state prison to an inpatient drug facility. The retainer agreement that she prepared specified that Lester and Jones, his mother, would be responsible for the expense of the expert. It also noted that the public defender who had previously represented Lester had not visited him in prison, implying that his case was being neglected.

Despite respondent's contradictory statements, it is clear from the record that she failed to appear at the September 2, 2008 status conference. Judge Waters' September 4, 2008 letter confirmed his telephone conversation of the previous day, in which he had informed her that the status conference had been postponed to September 15, 2008. Nevertheless, respondent testified, inconsistently, that Judge Waters had excused her from appearing at the status conference and that she had appeared on September 2, 2008.

In October 2008, six months after being retained, respondent submitted a letter to Judge Waters, asking to be relieved as counsel in the Lester case, based on Jones and Lester's refusal to pay her fee and the cost of a drug evaluation. The letter, which should have been in the form of a motion, did not indicate that it had been served on the prosecutor's office. Moreover, despite respondent's earlier criticism of the public defender, she suggested, in her application, that Lester "(re)obtain" the

services of the public defender, Dinaz Ahktar, asserting that she had been doing an excellent job. In addition, respondent questioned her client's decision to retain her, in light of the fact that, had he remained represented by the public defender, he would have been provided with an expert witness at no cost.

If that statement is true, respondent should have disclosed to Lester that, by retaining her, he forfeited his right to an expert witness. Such disclosure would have permitted Lester to make an informed decision about the retention. There is no indication in the record that respondent had advised Lester that, by retaining private counsel, he had relinquished his right to obtain an expert witness at no cost to him.

On October 30, 2008, Judge Waters sent to respondent both an order denying the motion and a letter informing her that the next status conference was scheduled for November 17, 2008. Respondent alleged that, because she had not received Judge Waters' order denying her application and the accompanying letter, she was not aware of the November 17, 2008 status conference. Yet, she further claimed, again inconsistently, that, on November 16, 2008, the judge's law clerk and criminal case team leader had given her permission not to appear at the November 17, 2008 status conference.

On November 18, 2008, respondent faxed a letter to Judge Waters complaining about Jones and Lester's failure to pay her and

the expert's fees, and about the long commute from her office to the Bridgeton courthouse. In this letter, respondent also disclosed to Judge Waters facts detrimental to Lester's case, essentially telling the judge that her client was guilty of conspiring to smuggle drugs into prison and that the means of obtaining that evidence (a wiretap) was proper. By making those statements, respondent jeopardized potential defenses to those charges. Although respondent was not charged with unethical conduct in this regard, her actions reveal either a startling ignorance of her obligations to her clients or a troubling willingness to compromise her clients' position to advance her own cause.

Respondent compounded her misconduct when, on January 5, 2009, she again failed to appear in court in the Lester matter. Based on respondent's inattention to her client, Judge Waters directed Lester to apply for representation by the public defender's office.

In her February 27, 2009 letter to Judge Waters, which he did not receive until April 13, 2009, respondent again contradicted herself, asserting that she had not appeared for the November 17, 2008 status conference because (1) she was not aware of it; (2) she had not yet received the denial of her motion to withdraw; (3) her client had not complied with the terms of the retainer agreement; and (4) Lester would not be able to appear, having been

hospitalized as a result of an assault in prison. Respondent again referred to the long distance between her office and the courthouse. The obvious inference to be drawn from respondent's statements is that she found it inconvenient to travel to Cumberland County and, therefore, neglected the Lester case.

Other than the appearance at the September 15, 2008 status conference, respondent did not submit credible proof that she had performed services on Lester's behalf. Indeed, the fee arbitration committee's determination that respondent refund her entire $7,500 fee to Jones is a recognition that she had failed to justify her fee.

Based on the foregoing, we find that respondent was guilty of gross neglect, failure to continue representation when ordered to do so by a tribunal, knowing disobedience of an obligation under the rules of a tribunal, and conduct prejudicial to the administration of justice, violations of RPC 1.1(a), RPC 1.16(c), RPC 3.4(c), and RPC 8.4(d), respectively.

In the Alston/Brown matter, respondent represented her client for only several weeks. On February 8, 2008, she was retained to represent Brown in a criminal matter, for a fee of either $5,000 (as Alston believed) or $7,500 fee (as respondent asserted).

Alston asserted that she never received any evidence, such as a letter of appearance, that respondent had taken any action on Brown's behalf. According to Fitz-Patrick, Brown confirmed that he

had had no contact from respondent, after he signed the retainer agreement. In addition, Fitz-Patrick reported that the public defender, Ann Sorrell, asserted that respondent had never entered an appearance for Brown and that Sorrell had represented Brown from February 15, 2008 until other private counsel, Bernardo Henry, was retained.

In a February 29, 2008 letter to Alston and Brown, respondent purported to terminate the representation, based on their failure to pay the remaining $2,500 of her $7,500 fee. By this time, Brown had retained Henry, after having been represented by the public defender for the prior two weeks.

In the February 29, 2008 letter, respondent claimed that, during the three weeks that she had represented Brown, she had performed thirty hours of work on his behalf. These entries appear grossly inflated. For example, she claimed to have spent twelve hours of "research" to ascertain from the public defender the charges pending against Brown, as well as four hours to research the time periods that Brown was represented by a public defender.

Although respondent claimed that she had attended a bail hearing for Brown, she offered no supporting documentation. She further alleged that she could not enter an appearance for Brown because the public defender had already done so. She could have easily remedied this problem by obtaining a substitution of attorney.

As for the failure to reply to the grievance, Fitz-Patrick testified that respondent had acknowledged its receipt and had represented that she would submit a reply. Respondent, thus, failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

In our view, whether respondent was guilty of gross neglect in this case is a closer question. The period of her representation was very brief. It appears that, after receiving her fee, she took little action on Brown's behalf. Her failure to act promptly may have constituted a lack of diligence; however, the complaint did not charge her with violating RPC 1.3. Based on a lack of clear and convincing evidence of gross neglect, we dismiss that charge.

As to count three, respondent failed to comply with the requirements of the IDRC, following her conviction of driving while intoxicated. On September 9, 2008, she signed the court order, which indicated that she was to attend the IDRC program. On February 23, 2009, the program notified the municipal court of her noncompliance, indicating that she had previously been so notified on January 27, 2009. Respondent was copied on the February 23, 2009 notice. On three occasions, thus, she was notified of her obligation to complete the IDRC requirements.

On March 27, 2009, the municipal court sent a notice to respondent, requiring her to appear in court on April 14, 2009.

Because she failed to appear, a bench warrant was issued for her arrest. Fitz-Patrick asserted that, once he learned of the outstanding bench warrant, he notified respondent, who replied that she would take care of it. Respondent's failure to contact the municipal court resulted in her arrest.

Respondent's explanations for her noncompliance are devoid of merit. First, she claimed that she could not attend the IDRC program because her license had been suspended. The same argument could be made for any drunk driving defendant whose license is suspended, but must fulfill the IDRC obligations. Respondent could have made arrangements for transportation.

Second, her explanation that the IDRC requirements, although contained in a court order that she signed, went over her head because no alcohol or drugs were involved in her driving-while-intoxicated case is difficult to understand. Third, she was represented by counsel at the time, who presumably would have answered any questions that she might have had about her sentence.

We find, thus, that respondent's failure to appear in court violated RPC 3.4(c) and RPC 8.4(d).

In the Harris/Scott matter, respondent agreed, for a $350 fee, to provide a consultation about a potential post-conviction relief application. It is undisputed that Harris paid the fee. Although Harris asserted in the grievance that respondent had failed to meet with Scott, respondent claimed that she had a

telephone conversation with him about the case. Harris filed a criminal complaint charging respondent with theft, because, according to Harris, respondent had failed to provide any services, despite her retention of the fee.

The issuance of the summons requiring respondent to appear in court is questionable. The matter should have been resolved either in a civil or attorney disciplinary setting, or by way of fee arbitration. Nevertheless, respondent should have complied with the notice to appear in court and, at a minimum, should have followed through on her representation to Fitz-Patrick that she would resolve the outstanding warrant. Her failure to do so constituted a violation of RPC 3.4(c) and RPC 8.4(d). Similarly, her failure to reply to the grievance, despite her assurance to Fitz-Patrick that she would do so, violated RPC 8.1(b).

As in the Alston/Brown matter, the record does not contain clear and convincing evidence of gross neglect. The sole allegation to support this charge is respondent's failure to contact Harris, after agreeing to provide a consultation. Even if this claim were true, respondent's conduct would not amount to gross neglect, but failure to return an unearned fee, a violation with which respondent was not charged. We, thus, dismissed the RPC 1.1(a) charge.

In the Flores matter, respondent revealed a remarkable lack of knowledge about criminal law. She agreed to represent Flores in

his efforts to eliminate the component of his criminal sentence, subjecting him to community supervision for life, pursuant to Megan's law. Respondent suggested a three-prong approach: (1) filing a post conviction-relief application; (2) arguing that the sentence was unconstitutional under the Johnson/Rosado cases; or (3) petitioning the governor for a grant of clemency.

By her own admission, respondent held herself out as an experienced criminal law attorney. In the March 23, 2008 e-mail to Flores, she even guaranteed a successful outcome. Despite respondent's testimony that her intent was to assure Flores that she would work hard for him, it is obvious that her remark about "the percentile right below 100%" referred to the outcome of the case, as indicated by her disclaimer that the RPCs do not permit her to "guaranty the perfect result."

A review of Flores' case reveals that respondent's representation was inadequate. First, she failed to recognize that there is no time limit on an application to correct an illegal sentence. Because Flores' report, issued following his evaluation at the Adult Treatment and Diagnostic Center, indicated that he should not be sentenced under Megan's law, it appears that Flores had a strong argument that his sentence, including the CSL requirement under Megan's law, was illegal. The five-year deadline for filing a post-conviction relief petition, thus, may not have applied.

Second, respondent contended that an argument could have been advanced that, because respondent was not made aware of the CSL requirement before entering his guilty plea, his constitutional rights were violated, pursuant to holding in the Johnson/Rosado cases. Those companion cases reversed sentences of defendants who had pleaded guilty without being told that they were subject to mandatory parole supervision. Thus, the holding that a defendant must be made aware of all penal consequences at the time of the entry of a guilty plea appears to be applicable to Flores' case. Yet, respondent alleged that she failed to pursue this course of action because a state official had told her that "the state was not prepared to enter a constitutional challenge." Respondent cited no authority for the proposition that the state could preclude a defendant from raising a constitutional claim.

Third, respondent should have known, without performing any research, that the prospects of a governor's granting clemency to a sex offender were low. Nevertheless, respondent claimed that she did a "a lot of research," before contacting the governor's ombudsman, who had informed her that Governor Corzine would not look favorably on a clemency application from a convicted sex offender. Moreover, respondent incorrectly testified that Flores had been "pretty highly tiered," a circumstance that, she claimed, made his request much more unlikely to be granted. Flores, however, had been classified as Tier 1, the lowest category. In

this regard, respondent either displayed a troubling lack of familiarity with Flores' case or was less than truthful at the ethics hearing.

Other aspects of the Flores case call into question the credibility of respondent's testimony. For example, the circumstances of her retention were disputed. Flores alleged that respondent had made the initial contact, calling him while he was at a restaurant. He believed that she had obtained his information from a website, where he had posted a request for assistance. Respondent, in turn, was adamant that Flores had first called her.

Respondent's first e-mail to Flores supports his version of the events. In that document, respondent referred to her promise, made while he at a restaurant, to send him her contact information. If Flores had telephoned respondent, he would not have needed her contact information.

In addition, respondent claimed that Flores had first contacted her to pursue a wrongful employment termination case. Yet, in his e-mail to her, he indicated that he had been employed at his current job for seven years. Respondent later conceded that he had not discussed a wrongful termination claim with her.

Finally, respondent's explanations in connection with her representation to Flores concerning the "percentile right below 100%" and the recommendation letter that she had signed on Flores' behalf were both difficult to follow and not credible.

The record contains no document indicating that respondent had performed any services for Flores. The documents that respondent claimed had constituted her research were almost identical to those that Flores asserted he had provided to her, at the onset of the representation. In exchange for an $8,500 fee, Flores received from her only the retainer agreement, two e-mails (one providing her contact information and one guaranteeing a successful result), and the letter of recommendation.

According to Flores, after respondent informed him that she was moving, his attempts to contact her were unsuccessful. He did not have her new address. His e-mail and regular mail, sent in accordance with the prior contact information that he had, were ignored.

We find, thus, clear and convincing evidence that, in the Flores matter, respondent was guilty of gross neglect, failure to communicate with the client, unreasonable fee, failure to protect the client's interests upon termination of the representation, and false or misleading communication, violations of RPC 1.1(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(d), and RPC 7.1(a)(2), respectively.

The complaint also charged that respondent's failure to provide Flores with her contact information, after she moved her office, violated RPC 1.4(a), which states: "A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer." This rule is inapplicable here

because Flores was not a prospective client. More accurately, respondent's conduct amounted to abandonment of a client, a violation of RPC 1.16(d) (failure to protect a client's interests upon termination of the representation), a rule with which she was charged in the complaint. R. 1:20-4(b). We, thus, dismissed the RPC 1.4(a) charge.

As to the charge that respondent engaged in a pattern of neglect, for such a finding at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, because respondent was guilty of gross neglect in only two matters, we dismiss the RPC 1.1(b) charge.

In sum, respondent was guilty of the following ethics violations: engaging in gross neglect in two matters, failing to communicate with a client in one matter, charging an unreasonable fee in one matter, failing to continue representation when ordered to do so by a tribunal in one matter, failing to protect a client's interests upon termination of the representation in one matter, knowingly disobeying an obligation under the rules of a tribunal in three matters, making a false or misleading communication in one matter, failing to cooperate with disciplinary authorities in two matters, and engaging in conduct prejudicial to the administration of justice in three matters by failing to comply with court orders.

We dismissed the charges of gross neglect in counts two and four, the charge of failure to inform a prospective client of how to communicate with a lawyer, and the charge of pattern of neglect.

The remaining issue for us to determine is the quantum of discipline.

The discipline for attorneys who, like respondent, have failed to appear for scheduled court dates ranges from a reprimand to a suspension. See, e.g., In re Frankfurt, 164 N.J. 596 (2000) (reprimand for attorney who, after accepting a case from the public defender's office, continually failed to appear in court for pre-trial conferences, thereby disobeying pre-trial orders and disregarding the rights of his client and adversary and his duties toward the court; although the judge extended a courtesy to Frankfurt by allowing him to select the trial date, shortly before the scheduled date the attorney notified the judge's office that he was unprepared for trial and would not be appearing; he appeared only under threat of sanction, stating that he was unprepared because his private clients took precedence over public defender cases; the attorney also exhibited rude conduct toward the judge and her staff; although he had a prior three-month suspension, it was not considered in assessing discipline because it was imposed after the misconduct in the matter under consideration); In re Antonas, 157 N.J. 547 (1999) (reprimand for

attorney who was guilty of gross neglect and failure to appear in court on scheduled trial dates, resulting in a contempt order; after the attorney's motion to be relieved as counsel had been denied, he relocated to Florida and refused to return to New Jersey for the trial despite his awareness that he remained counsel of record); In re Kern, 135 N.J. 463 (1994) (reprimand imposed on attorney who, after representing a physician for twenty-six days of hearing before the Office of Administrative Law (OAL), filed a motion to withdraw, which the judge denied, characterizing the matter as a fee dispute; the attorney's subsequent applications to the OAL acting director, the Appellate Division, and the Supreme Court were unsuccessful; the attorney then filed a lawsuit in the Law Division, which was dismissed for lack of jurisdiction and renewed his motion to withdraw before the OAL judge, which was denied; the attorney refused to appear at the OAL hearing, in violation of RPC 1.16(c)); In re D'Arienzo 207 N.J. 31 (2011) (attorney censured for engaging in conduct prejudicial to the administration of justice by failing to appear in a Bergen County Municipal Court for a scheduled criminal trial and, thereafter, not appearing at an order to show cause stemming from his failure to appear at the trial; previous discipline included a three-month suspension and two admonitions); and In re Saavedra, 162 N.J. 108 (1999) (attorney suspended for three months; after agreeing to represent a juvenile, the attorney informed the

family in court that he could not represent the client for no fee and left the courthouse without notifying the judge, assuming that the family would apply for a public defender; at a later court date, when the attorney informed the judge that he did not intend to represent the client any longer, the judge told him that he required leave of court to withdraw, which would not be granted given the upcoming trial date; nevertheless, the attorney failed to appear at the trial; he submitted a motion to withdraw, without a supporting certification, after the trial date had passed; he then failed to appear on the return date of an order to show cause for the imposition of sanctions, resulting in a bench warrant for his arrest; the attorney's conduct amounted to gross neglect, a lack of diligence, and failure to continue representation when ordered to do so by a tribunal, which amounted to conduct prejudicial to the administration of justice; prior three-month suspension for similar misconduct, a private reprimand, and a public reprimand).

Conduct involving gross neglect (with or without a lack of diligence) and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Ronald M. Thompson, DRB 10-148 (June 23, 2010) (attorney's inaction led to the dismissal of his minor client's complaint and the denial of his motion to reinstate the complaint;

the attorney did not inform the minor's parents that the complaint had been dismissed and otherwise failed to keep them adequately informed of the status of the case; the attorney was admonished); In the Matter of Peggy O'Dowd, DRB 09-027 (June 3, 2009) (admonition imposed; in the course of the representation of three clients, attorney did not adequately communicate with them, in one matter lacked diligence in resolving routine matters to complete the administration of an estate, and in a third matter failed to timely pay the condominium management company, to timely file certain documents, and to provide copies of such documents to the client; mitigation included the attorney's personal circumstances at the time, her ultimate completion of the work for which she had been retained, the lack of permanent harm to the clients, and the attorney's recognition that she had to close her law practice and seek help from another law firm); In re Russell, 201 N.J. 409 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In re Tinghino, 210 N.J. 250 (2012) (reprimand for attorney guilty of lack of diligence and gross neglect in one matter; although the attorney was inexperienced in the area of the client's representation, had a clean disciplinary record, set out to make the client whole, reported his conduct to disciplinary

authorities, and expressed remorse for his wrongdoing, the aggravating factors required the imposition of a reprimand; specifically, after the client's complaint was dismissed for having been filed in the wrong court, the attorney made numerous misrepresentations to the client about the status of the case, including that there was a settlement offer, fabricated a release for the client's signature, and wrote two letters on behalf of the client stating that settlement monies would be forthcoming; the attorney's negotiation of his own restitution agreement with the client without advising her to obtain separate counsel was seen as another aggravating factor); In re Kurts, 206 N.J. 558 (2011) (attorney reprimanded for mishandling two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other, he was retained to obtain a reduction in child support payments but at some point ceased working on the case and closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to memorialize the basis or rate of his fee, and failure to cooperate with disciplinary authorities; mental illness considered in mitigation; no prior discipline); and In re Coffey, 206 N.J. 324 (2011) (on a motion for discipline by consent, reprimand imposed for attorney's

gross neglect, lack of diligence, and failure to adequately communicate with clients in three matters; prior admonition; mitigating factors were the attorney's admission of wrongdoing, his discharge from his employment, and his parents' failing health).

As to respondent's guarantee about the outcome of the Flores case, most cases arising under RPC 7.1(a)(2) involve attorney advertising and generally result in the imposition of a reprimand. See, e.g., In re Garces, 163 N.J. 503 (2000), and In re Grabler, 163 N.J. 505 (2000) (attorneys reprimanded for making false and misleading statements in a Yellow Page advertisement that included the designation certified civil and criminal trial attorney, when neither attorney was so certified; the ad also included the statement "largest recovery in the shortest time," in violation of RPC 7.1(a)(1) and RPC 7.1(a)(2) and (3)); In re Anis, 126 N.J. 448 (1992) (reprimand for attorney who misrepresented that he was an experienced personal injury litigator and falsely implied that other attorneys routinely charged a one-third contingent fee in certain matters, despite the graduated fee provisions of R. 1:21-7)); and In re Caola, 117 N.J. 108 (1989) (attorney sent a targeted direct-mail solicitation letter misrepresenting the number of years he was in practice, his status in the law firm, and the number and types of cases he handled).

Charging an unreasonable fee ordinarily deserves an admonition or a reprimand, if it is limited to one incident. See, e.g., In the Matter of Raymond H. Hamlin DRB 09-051 (June 11, 2009) (although attorney agreed to represent a client on a contingent fee basis, after the client rejected a $150,000 settlement offer, the attorney attempted to have the client sign an agreement for the payment of a fee ($50,000) even without a recovery; no disciplinary history; attorney received an admonition); In the Matter of Angelo Bisceglie, Jr., DRB 98-129 (September 24, 1998) (admonition for attorney who billed a Board of Education for work not authorized by the Board, although it was authorized by its president; the fee charged was unreasonable, but did not reach the level of overreaching) and In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997) (admonition for attorney who received $500 in excess of the contingent fee permitted by the rules).

If the charge is so excessive as to evidence intent to overreach the client, then the more severe level of a reprimand is required. See, e.g., In re Read, 170 N.J. 319 (2000) (attorney charged grossly excessive fees in two estate matters and presented inflated time records to justify the high fees; strong mitigating factors considered); In re Hinnant, 121 N.J. 395 (1990) (in a real estate matter, attorney attempted to collect a $21,000 fee, including commissions on the purchase price, a reduction of the

purchase price and a sharing of the broker's fee; the attorney also had conflicting interests in the transaction); and In re Mezzaca, 120 N.J. 162 (1990) (attorney engaged in a pattern of overreaching by charging fees on gross recoveries; the attorney also delayed the return of a client's funds and failed to provide clients with written contingent fee agreements).

Finally, attorneys who fail to cooperate with disciplinary authorities usually receive admonitions, even in the face of other violations, if there is no ethics history. See, e.g., In the Matter of Douglas Joseph Del Tufo, DRB No. 11-241 (October 28, 2011) (attorney did not reply to the district ethics committee's investigation of the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB No. 11-029 (April 29, 2011) (attorney failed to comply with disciplinary investigator's requests for information about the grievance; the attorney also violated RPC 1.1(a) and RPC 1.4(b)); In the Matter of Kevin H. Main, DRB 10-046 (April 30, 2010) (attorney failed to reply to two letters from the ethics investigator seeking his version of the events); and In the Matter of Robert W. Laveson, DRB 08-436 (March 27, 2009) (attorney failed to reply to all of the district ethics committee investigator's questions during the investigation into whether the attorney had practiced while ineligible; although the committee concluded that the attorney had not committed that infraction, he nevertheless failed to cooperate

with the committee; mitigating factors included personal and professional problems faced by the attorney at the time of the investigation and his claim that he had not received all of the investigator's letters and therefore did not know that additional information was required of him).

Respondent's conduct in this matter is similar to that of the attorneys in Frankfurt, who was reprimanded for repeatedly failing to appear in court, and Saavedra, who received a three-month suspension for failing to appear in court, resulting in the issuance of both an order to show cause and a bench warrant. Saavedra, however, had a disciplinary history (a prior three-month suspension), unlike respondent. On the other hand, unlike Saavedra, respondent is also guilty of other serious infractions, as detailed above: exhibiting gross neglect in two cases, failing to communicate with a client, charging an unreasonable fee, failing to continue representation when ordered to do so by a tribunal, failing to protect a client's interest upon termination of the representation, knowingly disobeying an obligation under the rules of a tribunal, making a false or misleading communication about results a lawyer can achieve, failing to cooperate with disciplinary authorities in two cases, and engaging in conduct prejudicial to the administration of justice in three cases by failing to comply with court orders.

We find that respondent's mitigating factor of a prior unblemished career of twenty-four years is more than offset by the aggravating factors in this case. As previously discussed, respondent's credibility is suspect. Her testimony in this matter was not only at odds with that of the grievants and the OAE investigator, but also was internally inconsistent on occasion. In addition, her hearing diatribes displayed a lack of respect for the disciplinary process. Furthermore, she resorted to casting aspersions on all of her prior clients, accusing them of lying. She also displayed a substantial lack of fundamental knowledge concerning procedures, such as sending a letter to Judge Waters, rather than a formal motion supported by a certification, when she sought leave to withdraw from the Lester case. More seriously, in that letter, she also revealed to the judge information that her client was guilty of the crimes with which he had been charged and which she had been retained to defend. In addition, she virtually abandoned her client, Flores, when she relocated without informing him of her new contact information.

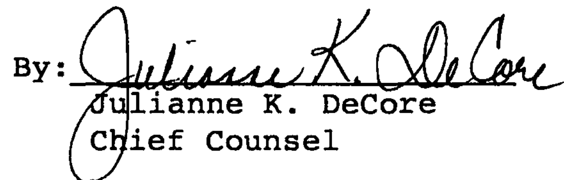
There can be little doubt that the public needs to be protected from this respondent. Taking into account the totality of respondent's misconduct, we determine that a three-month suspension, coupled with the requirement that, before reinstatement, she provide proof of fitness as attested by a

mental health professional approved by the OAE, is the appropriate measure of discipline.

Member Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

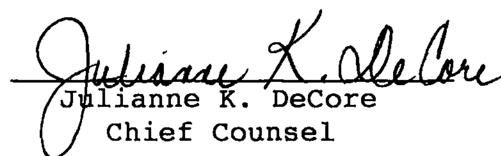
In the Matter of Cheryl H. Picker
Docket No. DRB 12-136

Argued: July 19, 2012

Decided: October 17, 2012

Disposition: Three-month suspension

| *Members* | **Disbar** | **Three-month Suspension** | **Censure** | **Reprimand** | **Admonition** | **Did not participate** |
|---|---|---|---|---|---|---|
| Pashman | | X | | | | |
| Frost | | X | | | | |
| Baugh | | X | | | | |
| Clark | | | | | | X |
| Doremus | | X | | | | |
| Gallipoli | | X | | | | |
| Wissinger | | X | | | | |
| Yamner | | X | | | | |
| Zmirich | | X | | | | |
| Total: | | 8 | | | | 1 |



Julianne K. DeCore
Chief Counsel