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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 99-152 and 99-159

IN THE MATTER OF :
 :
MARIA P. FORNARO :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: December 6, 1999

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

Pursuant to R. 1:20-4(f), the District X Ethics Committee ("DEC") certified the records in these matters directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaints.

In DRB 99-152, the DEC first attempted to serve respondent with the complaint in August 1998. The complaint was sent to her last known address by certified and regular mail. The certified mail was returned marked as "unclaimed." Three further mailings were forwarded to respondent at this address, but all correspondence was returned marked either for return or as "unclaimed." The DEC also attempted to serve respondent at a Morristown address (on file at the Office of Attorney Ethics), but both the certified and regular mail were returned as "undeliverable." A final attempt to serve respondent was made by mailing

the complaint to a New York address located on the internet by the DEC investigator. The certified mail, however, was again returned as "unclaimed." Ultimately, respondent was served by notice of publication in the Morris County Daily Record, on March 3, 1999.

In DRB 99-159, the complaint was sent to respondent's Morristown address on October 7, 1998 by certified and regular mail. The certified mail was returned marked as "refused" and the regular mail was returned marked as "undeliverable." On November 10, 1998, a second attempt was made to contact respondent at a different Morristown address. The certified mail was again returned marked as "undeliverable." Regular mail was not returned. Subsequent correspondence sent to respondent's Ridgewood address was returned marked as "moved, left no address," and certified mail sent to respondent at a New York address was returned marked as "unclaimed." As in the previous matter, respondent was served by notice of publication, on March 3, 1999, in the Morris County Daily Record.

Respondent was admitted to the New Jersey bar in 1989. She has been disciplined twice. On February 26, 1998, she was suspended for three months for misconduct in four matters, including violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5 (failure to provide in writing the basis or rate of a fee), RPC 1.16 (failure to surrender client's file), RPC 8.1(a) (making false statement of material fact in connection with a disciplinary matter), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent has not yet applied for reinstatement. In December 1998,

respondent was reprimanded for violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) in two matters.

* * *

The Cuseo Matter– Docket No. DRB 99-152

On October 19, 1992, Charles and Josephine Cuseo retained respondent to represent them in a personal injury claim. At that time, the Cuseos gave respondent a \$500 check for “costs.” Although they signed some “papers” that contained information about respondent’s fee, they did not receive copies of the documents. For more than a year, respondent took little or no action on the Cuseos’ case and failed to return their telephone calls. Despite the Cuseos’ written request that respondent provide them with the “papers” they had signed in connection with the legal fee, respondent never provided the documents to them.

According to the complaint, sometime in 1993 the Cuseos received a letter from an insurance company indicating a potential settlement of their claim. Respondent had not notified them about a settlement offer. Their subsequent attempts to reach respondent about the offers, both by mail and by telephone, were unsuccessful.

Although respondent filed a complaint on behalf of the Cuseos on August 5, 1994, the Cuseos were not aware of that fact until told by the ethics investigator in 1998. The Cuseos were also unaware that their complaint had been dismissed four times for lack of prosecution. The last dismissal without prejudice was June 23, 1998. Respondent did not file a motion to reinstate the Cuseos’ suit.

The ethics complaint charged that, throughout respondent's representation of the Cuseos, she failed to adequately communicate with them. Between April 1996 and March 1997, the Cuseos made eleven telephone calls to respondent, all unreturned.

In March 1998, the Cuseos made their last attempt to contact respondent, this time by letter, complaining that they had received no communication from her in approximately fourteen months. Respondent then sent a substitution of attorney form for their signature. Respondent's letter did not explain the procedural significance of the form or the Cuseos' right to retain new counsel of their choice. Based on respondent's letter, the Cuseos were under the impression that new counsel would be provided by respondent or by the court. Hence, they did not complete the substitution of attorney form.

The complaint charged that respondent's conduct in the Cuseo matter violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(b) (failure to provide in writing the basis or rate of a fee) and RPC 1.16(d) (failure to properly terminate representation).

The complaint also charged that respondent's actions in this matter, in conjunction with her misconduct in her prior disciplinary matters, constituted a pattern of neglect, in violation of RPC 1.1(b).

Finally, the complaint charged that, during respondent's representation of the Cuseos, she moved her office three times and failed to notify the New Jersey Lawyers' Fund for Client Protection ("the Fund") of the changes in address, in violation of R. 1:20-1(c) and RPC 5.5(a) (unauthorized practice of law).

The Corcoran Matter – Docket No. DRB 99-159

In June 1992, Julie Lewis Corcoran retained respondent to represent her in an immigration matter. At their initial meeting, respondent informed Corcoran that her fee would be approximately \$3,000 and that it could be paid in installments. Although respondent advised Corcoran that she would prepare a retainer agreement, respondent did not do so.

Despite the lack of a retainer agreement, Corcoran made installment payments of \$375 in September and December 1992. Thereafter, respondent told Corcoran that she would not begin working on her case until Corcoran paid the full \$3,000. Alarmed by respondent's statement that she had not commenced the application process and concerned that she might be in the United States illegally, Corcoran paid respondent \$3,000 by July 1993.

For the next two years, Corcoran had no communication with respondent. In 1995, after Corcoran had married, she attempted to reach respondent on numerous occasions and left messages on respondent's answering machine, to no avail. Corcoran finally spoke with respondent and, after some further difficulty, met with her on August 25, 1995.

After the August 25, 1995 meeting, respondent sent the necessary documents to the Immigration and Naturalization Service ("INS") to reflect Corcoran's change in marital status. However, respondent failed to pay the required \$130 filing fee. Ultimately, Corcoran paid the fee. Because Corcoran was unable to contact respondent, she completed the immigration application process herself and had to pay additional fees to INS.

The complaint charged that respondent's conduct in the Corcoran matter violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with the client). The complaint also charged that respondent failed to cooperate with the investigation of the grievance, in violation of R.1:20-3(g)(4), more properly a violation of RPC 8.1(b).

* * *

Service was properly made in both of these matters, as respondent was served by notice of publication on March 3, 1999 in the Morris County Daily Record. Therefore, pursuant to R. 1:20-4(f), the allegations of the complaint are deemed admitted. Following a de novo review of the complaints, we found that the facts alleged in the complaints support a finding of unethical conduct.

In the Cuseo matter, respondent violated RPC 1.4(a), by failing to return the Cuseos' numerous telephone calls and to apprise them of the status of their case; RPC 1.3 and RPC 1.1(a), by permitting the Cuseos' lawsuit to be dismissed four times for lack of prosecution; RPC 1.1(b), by exhibiting a pattern of neglect, when the conduct in Cuseo is viewed in conjunction with two prior instances of gross neglect; RPC 1.5(b), by failing to provide the Cuseos with a fee agreement; and RPC 1.16(d), by failing to explain to them the significance of the substitution form or advise them to obtain new counsel. We declined to find, however, that respondent's failure to inform the Fund of her address changes violated RPC 5.5, although we considered it as an aggravating factor.

In the Corcoran matter, respondent's failure to complete the immigration application process, requiring Corcoran to finalize the matter on her own, constituted gross neglect, in violation of RPC 1.1(a), and a lack of diligence, in violation of RPC 1.3; respondent's failure to return Corcoran's telephone calls and to keep Corcoran informed of the status of the matter constituted a failure to communicate, in violation of RPC 1.4(a); respondent's failure to reply to the Corcoran grievance and to cooperate with the DEC investigation constituted a violation of RPC 8.1(b); and respondent's failure to provide Corcoran with a written fee agreement violated RPC 1.5(b) (failure to provide in writing the basis or rate of a fee). Although the complaint did not contain a charge in this regard, the facts cited in the complaint provide a sufficient basis for a finding of this violation. In re Logan, 70 N.J. 222, 232 (1976).

This leaves only the issue of appropriate discipline. Respondent is no stranger to the disciplinary system. Moreover, her misconduct in these two matters is similar to the misconduct involved in her prior disciplinary matters. Her actions demonstrate an unwillingness to conform to the standards and expectations of the legal profession.

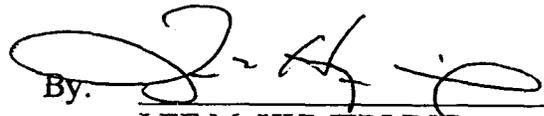
For misconduct of the nature involved here, in conjunction with respondent's prior history and the default nature of this proceeding, a two-year suspension is warranted. See, e.g., In re Pollan, 151 N.J. 494 (1997) (two-year suspension in default matter for misconduct spanning several years, including pattern of neglect, lack of diligence, failure to communicate, failure to surrender property and papers to a client, failure to expedite

litigation and failure to cooperate with disciplinary authorities; attorney had a prior six-month suspension).

Accordingly, a seven-member majority of the Board determined to suspend respondent for two years. Two members voted to impose a one-year suspension.

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

Dated: 12/6/95

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Maria P. Fornaro
Docket No. DRB 99-152 & DRB 99-159

Decided: December 6, 1999

Disposition: Two-Year Suspension

Members	Disbar	Two-Year Suspension	One-Year Suspension	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Cole		x					
Boylan			x				
Brody		x					
Lolla		x					
Maudsley			x				
Peterson		x					
Schwartz		x					
Wissinger		x					
Total:		7	2				

*Member Thompson is on a temporary leave of absence

Robyn M. Hill 12/15/99
Robyn M. Hill
Chief Counsel