

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-057

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IN THE MATTER OF  
SYLVIA BRANDON PEREZ  
AN ATTORNEY AT LAW

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Decision

Argued: April 17, 2003

Decided: July 15, 2003

Rustine Tilton appeared on behalf of the District IIB Ethics Committee.

Gerald D. Miller appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1976. On March 23, 1993 she was suspended from the practice of law for three months, effective April 15, 1993, for chronic recordkeeping violations. In re Brandon-Perez, 131 N.J. 454 (1993). On April 23, 1997, effective May 16, 1997, she was suspended for six months for misrepresenting, in an affidavit of title in her own real estate refinancing, her intended use of the proceeds from the

mortgage loan. In re Brandon-Perez, 149 N.J. 25 (1997). She was reinstated to the practice of law on April 3, 1998.

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The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 1.1(b) (pattern of neglect) in a product liability lawsuit and a malpractice action.

The record in this matter consisted primarily of respondent's testimony and a stipulation of facts entered at the DEC hearing.

In or about May 1995 Delia Crespo-Gonzalez, the grievant, along with one hundred forty-nine other plaintiffs, retained respondent to replace their attorney in an asbestosis suit.<sup>1</sup> During the pendency of the litigation, respondent was suspended for six months in May 1997. Another attorney handled the case during her suspension. After her April 1998 reinstatement, she resumed the plaintiffs' representation.<sup>2</sup>

The record is silent about respondent's activity in the case before November 1996, when the complaint was dismissed for her failure to appear at a case management conference, purportedly because of illness. After respondent filed a motion for reconsideration and a

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<sup>1</sup> At the DEC hearing, the panel chair alluded to the presence of three other grievants. The complaint and the stipulation, however, centered only on Crespo-Gonzalez' matter.

<sup>2</sup> R.1:20-20 governs the future activities of attorneys who have been suspended or disbarred. Subsection (a)(1) requires a suspended or disbarred attorney to promptly give notice of the suspension or disbarment to, among others, each client. "The notice to the client shall advise them to obtain another attorney.... Even if requested by a client, the disciplined or former attorney may not recommend an attorney to continue the action." The record is silent on whether respondent recommended the services of the new attorney.

notice of appeal, the complaint was reinstated. As detailed below, on May 13, 1999 the complaint was again dismissed on motion for summary judgment, this time with prejudice.

Shortly thereafter, respondent filed a notice of appeal. Because, however, she filed a brief without the required appendix, she requested an extension of time to re-file it. The re-filed brief was also deficient, prompting yet another extension of time. Instead of filing a new brief and appendix, respondent filed a motion requesting permission to file a joint appendix, on the basis that she "did not have the funds" for the filing fee. That motion was denied. Respondent took no further action in the matter. On May 30, 2000 the appeal was dismissed.

Respondent conceded that she never advised Crespo-Gonzalez of the dismissal of the complaint and of the appeal.

As a result of these dismissals, Crespo-Gonzalez and the other plaintiffs lost their claims.<sup>3</sup> There was some argument at the abbreviated DEC hearing regarding blame for the final dismissal of the complaint. Respondent's counsel argued that respondent's conduct was mitigated by the circumstances prompting the dismissal. According to counsel, the court granted the defendants' motion for summary judgment because of the plaintiffs' failure to substantiate that their illnesses or deaths had been asbestos-related or that the defendants had responsibility therefor. On the other hand, the presenter pointed out that respondent had three years, from 1995 to 1998, to obtain new experts and evidence regarding her clients' claims of asbestosis. On June 12, 1998, at oral argument on the defendants' summary judgment motion, the attorney for one of the defendants made the following statement:

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<sup>3</sup> At one point, the plaintiffs received a settlement offer for \$285,000, which they rejected, pursuant to advice by the attorney who handled the case while respondent was suspended.

The affidavit of [respondent] that we have submitted to the Court in our reply brief clearly shows that she's been involved in these cases since day one. She's now coming to this court, and she has been counsel of record in these cases for three years. She is now coming to this Court, and I might add, advising this Court of deaths which have occurred, things which have happened with these cases in complete violation of the on-going duty to amend answers to interrogatories and provide discovery, and she's now coming to this Court and saying she needs to have time to figure out whether these people are sick. That's a fundamental issue that should have been addressed before these cases were ever filed.

At this juncture, there were ninety-three plaintiffs involved.

In a written opinion, which is not part of the record, the court denied respondent's request for additional time to submit expert reports and other evidence, granted the defendants' motion for summary judgment and dismissed the complaint with prejudice.

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Crespo-Gonzalez retained respondent to also file a legal malpractice claim against the attorney who initially handled the asbestosis suit. Respondent stipulated that, although she filed a malpractice complaint, it was later dismissed for lack of prosecution. In addition, she conceded that she failed to communicate the status of the malpractice matter to Crespo-Gonzalez, including the dismissal of the complaint.

Respondent stipulated that, "as a result of Respondent's actions, Gonzalez's potential right of recovery against [the attorney] has been barred."

Respondent offered several factors in mitigation of her conduct. She claimed that (1) an unspecified illness prevented her from appearing in court in 1996, when the complaint was dismissed for the first time; (2) her sixteen-year old son had serious legal problems in

1996; (3) her daughter required a five-day hospitalization for Lyme's disease, in the summer of 1998; (5) during that time, respondent broke her foot and did not return to work until the end of the summer; and (5) in September 1998 her father was diagnosed with terminal cancer; she had to care for him in a Florida hospice until his death, in October of that year. According to respondent, all of these events affected her ability to properly represent Crespo-Gonzalez.

\* \* \*

The DEC found that respondent violated RPC 1.1(b) by her failure to prosecute the tort and malpractice actions. The DEC also found violations of RPC 1.3 and RPC 1.4(a) in both matters, but not of RPC 1.1(a). The DEC recommended a reprimand.

\* \* \*

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent stipulated that the tort litigation was dismissed because of her failure to prosecute the case. In fact, she restored the litigation once, only to allow a final dismissal with prejudice for a three-year failure to take action to substantiate her clients' asbestosis claims. Thereafter, she filed a faulty notice of appeal, which she later abandoned because she could not afford the filing fee. The malpractice action, too, was dismissed because of her failure to prosecute the case. She took no steps to vacate the dismissal or otherwise protect Crespo-Gonzalez' interests. Unlike the DEC, we found that respondent's behavior in the two cases amounted to gross neglect, in violation of RPC 1.1(a), in addition to lack of diligence,

in violation of RPC 1.3, and failure to communicate with clients, in violation of RPC 1.4(a). We did not find a violation of RPC 1.1(b), however. Ordinarily, three instances of gross neglect are required for a finding of a pattern of neglect. Here, while there were numerous plaintiffs involved in the asbestosis litigation, a total of only two matters were involved. In addition, respondent's prior misconduct did not include gross neglect.

Respondent's counsel argued that the court dismissed the tort complaint on the merits, rather than for procedural reasons, thereby recognizing the weakness of the plaintiffs' claims. Counsel urged the DEC to view the weakness of the case as a factor mitigating respondent's inaction. Although it would have been helpful to us to review the court's opinion, which is not part of the record, we need not be aware of the reasons for the dismissal of the complaint to find that respondent's conduct was unethical. For a period of three years, respondent failed to obtain competent medical reports substantiating her clients' claims. If it is true, as counsel argued, that such failure was the direct result of the weakness of the plaintiffs' claims, then respondent should have either refused to take on their representation or withdrawn from it at a later point.

Although some of the mitigating factors advanced by respondent are compelling, there are some aggravating circumstances as well. Specifically, if respondent was ill-equipped to handle a case of that magnitude, then she had a duty to recommend that her clients seek more competent representation. Moreover, within a few months from her restoration to the practice of law, she ran afoul of the disciplinary rules again. It would be expected that, after a three-month suspension in 1993 and a six-month suspension in 1997, respondent would have

conformed her conduct to the standards of the profession. Obviously, she has not learned from her prior mistakes.

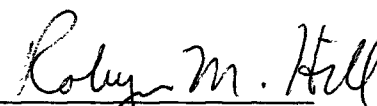
Ordinarily, a reprimand to a three-month suspension is appropriate discipline for this type of misconduct in one or a few matters, where the attorney has a prior ethics record. See, e.g., In re Mandle, 157 N.J. 68 (1999) (reprimand imposed where the attorney, in an estate matter, was guilty of gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with disciplinary authorities; prior reprimand for gross neglect, lack of diligence and failure to cooperate with disciplinary authorities in four matters); In re Yusem, 155 N.J. 595 (1998) (reprimand imposed where the attorney exhibited lack of diligence in a collection matter, failed to keep the client reasonably informed about the status of the case and failed to cooperate with ethics authorities' investigation; the attorney had a prior private reprimand for failure to take required action for over two and one-half years as an assignee and failure to reply to requests for information from the grievant and the ethics investigator); In re Olitsky, 154 N.J. 177 (1998) (three-month suspension for a combination of gross neglect, lack of diligence, failure to communicate and failure to utilize retainer agreements; the enhanced discipline was based on the attorney's ethics history, which included a prior private reprimand, an admonition and a three-month suspension); and In re Page, 156 N.J. 432 (1998) (three-month suspension where the attorney allowed his client's action to be dismissed; the attorney failed to inform the client of the filing of the complaint or its subsequent dismissal and took no further action thereafter; the attorney had received an admonition in 1995 for lack of diligence, failure to communicate with the client and failure to

cooperate with ethics authorities and also received a reprimand in 1997 for similar misconduct).

After consideration of the relevant circumstances, including respondent's disciplinary record, we determined that a three-month suspension is more in keeping with the nature of her ethics transgressions. One member would have imposed a six-month suspension. One member recused himself. Two other members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Robyn M. Hill  
Chief Counsel



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

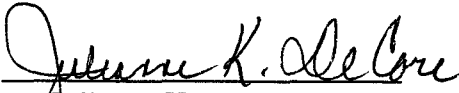
In the Matter of Sylvia Brandon-Perez  
Docket No. DRB 03-057

Argued: April 17, 2003

Decided: July 15, 2003

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Six-month Suspension</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>						X	
<i>Boylan</i>							X
<i>Holmes</i>		X					
<i>Lolla</i>			X				
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
<b>Total:</b>		5	1			1	2

  
 Julianne K. DeCore  
 Acting Chief Counsel