SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-219
District Docket No. XIV-2014-0281E

IN THE MATTER OF	:
AMY MACHADO	:
AN ATTORNEY AT LAW	:

Decision

Decided: January 17, 2017

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 3.3(a)(1) (lack of candor to a tribunal), RPC 5.5(a)(1) (unauthorized practice of law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

We determine to prohibit respondent's pro hac vice admission to the practice of law in New Jersey until further Order of the Supreme Court.

Respondent was admitted to the New York bar in 2004. She was admitted in New Jersey pro hac vice in 2011.

Service of process was proper in this matter. On February 29, 2016, the OAE sent respondent a copy of the complaint, in accordance with R. 1:20-4(d) and R. 1:20-7(h), to her home address, by regular and certified mail. The certified mail was returned marked "unclaimed." The regular mail was not returned.

On April 15, 2016, the OAE sent a second letter to respondent, at the same home address, by both certified and regular mail. The letter notified respondent that, unless she filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a charge of RPC 8.1(b) (failure to cooperate). Neither the certified mail nor the regular mail was returned to the OAE.

On April 28, 2016, respondent telephoned the OAE and left a message requesting additional time to answer the complaint. Although the OAE Director returned the call, he did not leave a message because the voicemail recording did not identify the number as belonging to respondent. The Director sent a letter of even date to respondent at her home address, by certified and

regular mail, extending to May 20, 2016 the deadline to submit her answer. Neither mailing was returned to the OAE.

As of June 9, 2016, the date of the certification of the record, respondent had not filed an answer to the ethics complaint.

I. Respondent's Practice of Law While Ineligible

a. The Rodriguez Criminal Matter

On September 26, 2011, Sarah Fern Meil, Esq., respondent's law school classmate, filed an application in the Criminal Division, Union County, before the Honorable Robert J. Mega, J.S.C., for respondent's pro hac vice admission, so that respondent could represent Angel Serpa Rodriguez in a criminal matter then pending in that court.

On September 26, 2011, Judge Mega entered an order admitting respondent as pro hac vice counsel for Rodriguez. The order required respondent to pay the annual attorney registration fee, required by R. 1:20-1(b) and R. 1:28-2, within ten days, and to submit an affidavit of compliance. Respondent, however, failed to pay the fee. Under the terms of the court order, the pro hac vice admission self-terminated at the end of the ten-day grace period. Nevertheless, respondent continued to

represent Rodriguez in the criminal matter from 2011 through 2014.

According to the complaint, respondent's failure to pay the attorney registration fee violated RPC 5.5(a)(1), by way of the following New Jersey Court Rules.

R. 1:20-1(b) states, in part, that "every attorney admitted to practice law in the State of New Jersey, including . . . those admitted pro hac vice . . . shall pay annually to the [Disciplinary] Oversight Committee a sum that shall be determined each year by the Supreme Court." Those attorneys who do not pay the registration fee are placed on the Court's list of ineligible attorneys. Ibid.

R. 1:28-2(a) states, in part, that all persons admitted pro hac vice shall make the same annual payment as a plenary attorney, to the treasurer of the New Jersey Lawyers' Fund for Client Protection.

b. The Alvarado Matter

On June 13, 2012, Meil filed an application with the Honorable Adam Jacobs, J.S.C., Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, for respondent's pro hac vice admission as counsel for Christian Alvarado, the defendant in a matrimonial action.

On July 23, 2012, Judge Jacobs signed an order admitting respondent pro hac vice. The order required respondent to pay the 2012 attorney registration fee within ten days, and to submit an affidavit of compliance. Once again, respondent failed to do so, but continued to represent Alvarado in 2012 and 2013.

Respondent finally paid the 2011, 2012, 2013, and 2014 attorney registration fees on April 29, 2014.

The complaint charged that, by her failure to pay the attorney registration fees required by her pro hac vice admissions in the Rodriquez and Alvarado matters, respondent's continued practice of law violated RPC 5.5(a)(1).

II. The Rodriguez Workers' Compensation Matter

On a date not disclosed in the record, respondent agreed to represent Rodriguez in a workers' compensation matter. On March 25, 2011, she sent a letter of representation to Protective Insurance Company, presumably the workers' compensation insurance carrier. Respondent sent that letter on letterhead she had fabricated, purportedly for the "Law Office of Sarah Fern Meil." The address listed under Meil's name was, however, that of respondent, not Meil. Meil did not authorize or consent to respondent's use of her name and letterhead.

The letter also requested that the carrier send all future correspondence in the case to the address listed (respondent's own). Respondent then signed the letter as "Amy Gold."[1] Respondent was not licensed to practice law in New Jersey when she sent the letter of representation, and had not been admitted pro hac vice for the workers' compensation claim.

According to count two of the complaint, by her actions, respondent violated RPC 5.5(a)(1), RPC 8.4(c), and RPC 8.4(d).

III. Respondent's Misrepresentations to Meil

In January 2012, respondent and Meil met for lunch. When asked about Rodriguez' criminal matter, respondent told Meil that the matter was concluded after he had pleaded guilty. In fact, respondent knew when she made those statements that they were untrue. Rodriguez' criminal matter was still pending and was not concluded until 2014.

Under the terms of the court order admitting respondent pro hac vice, respondent was authorized to appear and participate with Meil, the New Jersey attorney of record under R. 1:21-2(c)(4).

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[1] Elsewhere in the record, respondent refers to herself as Amy Gold Machado (Ex.1).

According to count three of the complaint, by lying to Meil about the status of Rodriguez' matter, respondent violated RPC 8.4(c).

IV. The Fraudulent Divorce From Rodriguez

Respondent first met Rodriguez in January 2010. The two began a social relationship that quickly turned romantic. When, in March 2010, Rodriguez was arrested and charged with aggravated assault, respondent agreed to represent him.[2] In April 2011, she obtained from Rodriguez a written waiver of any potential conflict of interest.

In August 2012, respondent and Rodriguez were married in Cuba. On September 20, 2012, they were also married in Fort Lee, New Jersey.

In 2013, Rodriguez and respondent agreed to divorce, so that respondent could pose as the fiancée of Rodriguez' cousin, Gorge Rodriguez, a Cuban national who sought entry into the United States. The plan called for respondent and Rodriguez to remarry once Gorge established his United States residency.

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[2] The formal ethics complaint does not indicate whether this matter is the same criminal matter referenced in count one of the ethics complaint.

To that end, on March 28, 2013, respondent signed and filed a pro se complaint for divorce. The complaint stated that the couple had irreconcilable differences, that there was no reasonable prospect of reconciliation, that they lived at separate addresses, and that the marriage should be dissolved.

Respondent's statements that she and Rodriguez had irreconcilable differences and lived separately were false. The couple had no such differences and lived together at the time of the divorce. In fact, respondent was pregnant with their first child at the time. Nevertheless, they were divorced in September 2013 and, three months later, respondent gave birth to a daughter.

Soon after the September 2013 divorce, respondent determined that it would be unethical for her to pose as Gorge's fiancée. She, therefore, abandoned efforts to assist him in what would have constituted immigration fraud. Instead, she agreed to remarry Rodriguez.

According to the complaint, by her actions, respondent violated RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d).

* * *

The facts recited in the complaint support most of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the

complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Nevertheless, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Respondent has engaged in appalling misconduct. First, she took advantage of a law school classmate, Meil, who agreed to sponsor respondent, a New York attorney, for pro hac vice admission in two New Jersey cases – the Rodriguez and Alvarez matters. Respondent then failed to pay the annual attorney assessments for the years required of her (2011 through 2014), and continued to represent her clients in the New Jersey courts during those years after the pro hac vice admissions had self-terminated. By doing so, respondent engaged in the unauthorized practice of law, a violation of RPC 5.5(a)(1).

To make matters worse, in March 2011, respondent did not obtain Meil's sponsorship for Rodriguez' workers' compensation matter. Rather, she fabricated letterhead for Meil and used it to send a letter of representation to the workers' compensation carrier. She pretended to represent Meil's New Jersey office, something that Meil did not authorize her to do, and of which she was unaware. Respondent then directed that all future correspondence be sent to her, at her own address, not to Meil's

actual law office. She did so in order to handle the case on her own, at a time when she was not authorized to practice in New Jersey. Respondent's creation of fictitious letterhead for that purpose constituted conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c).

Almost a year after sending the fabricated letter, respondent met Meil for lunch. When Meil, the New Jersey attorney of record in the criminal matter, asked about the status of Rodriguez' case, respondent lied about it, a violation of RPC 8.4(c).

The complaint also charged respondent with conduct prejudicial to the administration of justice (RPC 8.4(d)), as it related to Rodriguez' workers' compensation claim. The complaint, however, stated only that respondent sent an initial letter of representation to an insurance carrier. The letter contained no indication that a court was yet involved or that litigation was pending. As such, it is not clear that the letter affected or otherwise prejudiced the administration of justice. Thus, we dismissed this RPC 8.4(d) charge for lack of clear and convincing evidence.

Finally, and most seriously, respondent orchestrated and participated in her own fraudulent divorce. Incredibly, she and her husband entered into a pact whereby they would divorce, and

respondent would become engaged to Rodriguez' cousin, Gorge, to assist his entry into the United States. She would then remarry Rodriguez at some point in the future, once Gorge's U.S. residency had been established.

Respondent carried out the first phase of the plan, obtaining a divorce by falsely claiming, in a court document, that she and her husband had irreconcilable differences and were physically separated. All the while, however, they lived together and were expecting their first child a few months later. Apparently, after the birth of their daughter, respondent thought better of her plan, realized that she should not also engage in immigration fraud, and abandoned her plan to assist Gorge. Nevertheless, respondent's conduct was serious. By her actions, she lacked candor to the court (RPC 3.3(a)(1)), made misrepresentations to the court (RPC 8.4(c)), and engaged in conduct prejudicial to the administration of justice (RPC 8.4(d)).

The only issue remaining is the appropriate discipline for respondent's violations of RPC 3.3(a)(1), RPC 5.5(a)(1)b, RPC 8.4(c), and RPC 8.4(d).

Lack of candor to a tribunal has resulted in wide-ranging discipline from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410

(February 24, 2016) (admonition for attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; consequently, they were unavailable for trial, a violation of RPC 3.3(b) and RPC 3.4(c); at the next trial date, the attorney finally informed the court and his adversary that his client, the witnesses, and his own law firm were unaware that a trial had commenced, resulting in a mistrial; on the same day, the attorney informed his law firm of the offense; the law firm notified the client of what had happened, reimbursed the client $40,000 in attorney fees and costs, stripped the attorney of his shareholder status, suspended him for an undisclosed period of time and, after his reinstatement to the firm, had his legal work monitored by senior partners; in aggravation, we found that, prior to the attorney's admission of wrongdoing, judicial resources had been wasted when the court impaneled a jury and commenced trial; in mitigation, it was the attorney's first ethics infraction in his thirty-eight year legal career; he suffered from anxiety and high blood pressure at the time of his actions; the client suffered no pecuniary loss; his law firm had demoted him from shareholder to hourly employee, resulting

in significantly lower earnings on his part; and he expressed remorse and a commitment to regain the trust of the court, his adversaries, and the members of his firm); In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for a default judgment, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise non-lawyer employees); In re Duke, 207 N.J. 37 (2011) (censure for attorney

who failed to disclose his New York disbarment on a form filed with the Board of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (censure for attorney who submitted two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal; the attorney also practiced law while ineligible); In re Coffee, 174 N.J. 292 (2002) (on motion for reciprocal discipline in a matter where the attorney received a one-month suspension in Arizona, three-month suspension imposed for attorney's submission of a false affidavit of financial information in his own divorce case, followed by his misrepresentation at a hearing that he had no assets other than those identified in the affidavit); In re Lyle, 172 N.J. 563 (2002) (three-month suspension imposed on attorney who falsely stated in his complaint for divorce that he and his wife had been separated for eighteen months; we rejected as a mitigating factor the attorney's purported treatment for

depression at the time of the misconduct); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who concealed a judge's docket entry dismissing his client's divorce complaint, then obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Moras, 220 N.J. 351 (2015) (default; one-year suspension for attorney who misled a bankruptcy court by failing to disclose on his client's bankruptcy petition that she was to inherit property; gross neglect, lack of diligence, and failure to communicate with the client found in a second matter; failure to cooperate with the ethics investigation found in both matters; two prior reprimands, a three-month suspension, and a six-month suspension); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all

escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence to support her false accusation against the babysitter).

Attorneys found guilty of conduct prejudicial to the administration of justice typically have received either a reprimand or a censure, depending on the presence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to

communicate with clients; mitigating factors were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, we considered that the attorney's conduct occurred in the course of his own child custody case); In re D'Arienzo, 207 N.J. 31 (2011) (censure for attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; prior

three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); and In re LeBlanc, 188 N.J. 480 (2006) (censure for attorney's misconduct in three client matters, including conduct prejudicial to the administration of justice for failing to appear at a fee arbitration hearing, failing to abide by a court order and to produce information, alongside other ethics violations; mitigation included the attorney's stipulation of his wrongdoing, his belief that his paralegal had handled post-closing steps, and his lack of intent to disregard the obligation to cooperate with ethics authorities).

Serious, too, were respondent's other misrepresentations — the lie to Meil about the status of Rodriguez' criminal matter and the letter respondent fabricated and then sent to the workers' compensation insurance carrier.

Attorneys found guilty of misrepresentations to third parties generally have received reprimands. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.1(a)(1) and RPC 8.4(c)) and In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar

examination, a condition of her employment; compelling mitigation).

Finally, there is respondent's practice of law while ineligible from 2011 through 2014. She knew of her ineligibility from the very start in 2011, when the order admitting her pro hac vice stated that if she did not pay the attorney assessment, the pro hac vice admission would automatically terminate.

A reprimand is usually imposed when the attorney is aware of his ineligibility and practices law nevertheless. See, e.g., In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law nevertheless; prior three-month suspension) and In re Austin, 198 N.J. 599 (2009) (for a one-year period of ineligibility, attorney practiced law, knowing that he was ineligible to do so; misrepresentation also found).

Respondent's misconduct is similar to that of the attorneys in Coffee and Lyle, who both received three-month suspensions. Like respondent, both attorneys committed misconduct in their own divorce cases. Coffee submitted a false affidavit to hide his financial assets, and then lied at a hearing about them. Like respondent, Lyle misrepresented in his own divorce complaint that he and his wife had been separated, when they had not been. With a three-month suspension as the starting point for sanction, we turn to respondent's other improprieties.

As demonstrated by the above-cited cases, a reprimand, at a minimum, would be required for any of the three remaining major areas of misbehavior: (1) conduct prejudicial to the administration of justice; (2) misrepresentations to third parties; and (3) knowingly practicing law while ineligible. This additional misconduct, together with respondent's misrepresentations, would warrant a significant suspension.

There are, however, aggravating factors to consider. Respondent has, throughout these matters, shown a shocking lack of basic integrity, a requirement of all attorneys of this state. First, respondent tapped an old law school friend to twice sponsor her pro hac vice admission in New Jersey. Respondent then disobeyed the two court orders that admitted her to practice here, continued to practice law after the pro hac vice admissions self-terminated, and then lied to her gracious friend and sponsor when asked about the status of one of the representations. She then altered Meil's attorney letterhead and surreptitiously sent it to an insurer, an act that had the potential to harm Meil's reputation. Finally, respondent filed a formal court document to obtain a fraudulent divorce from her own husband (with whom she had no actual quarrel), gaming the court system in the process and stopping short only when the immigration fraud that she had intended somehow gave her pause.

In further aggravation, respondent has allowed this matter to proceed as a default. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).

In our view, respondent's misconduct, coupled with the aggravating factors, ordinarily would merit a significant term of suspension. However, because respondent is not a licensed New Jersey attorney, we determine to suspend her pro hac vice privileges in New Jersey until further Order of the Supreme Court, on notice to us and to the OAE. In addition, we direct that the OAE forward our decision to the disciplinary authorities in New York, where respondent is admitted.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Amy Machado
Docket No. DRB 16-219

Decided: January 17, 2017

Disposition: OTHER – PRO HAC VICE SUSPENSION

Members	OTHER – PRO HAC VICE SUSPENSION	Did not participate
Frost	X	
Baugh	X	
Boyer	X	
Clark		X
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1

Ellen A. Brodsky
Chief Counsel