

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-087
District Docket No. XIV-2010-003E

IN THE MATTER OF :
DORCA IRIS DELGADO-SHAFFER :
AN ATTORNEY AT LAW :

Decision

Decided: September 14, 2011

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

This matter came before us on a certification of default, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The five-count complaint charged respondent with gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to provide the client with a written retainer agreement (RPC 1.5(b)), failure to treat with courtesy and consideration all persons involved in the legal process (RPC 3.2), knowingly

disobeying an obligation under the rules of a tribunal (RPC 3.4(c)), responsibilities regarding a non-lawyer assistant (RPC 5.3(c)(1)), violating the RPCs through the acts of another (RPC 8.4(a)), failure to cooperate with disciplinary authorities (RPC 8.1(b)), and engaging in conduct prejudicial to the administration of justice (RPC 8.4(d)). For the reasons set forth below, we determine to impose a one-year prospective suspension on respondent for her unethical conduct.

Respondent was admitted to the New Jersey bar in 2002. At the relevant times, she maintained an office for the practice of law in Camden.

Effective January 2, 2009, respondent was suspended for two years for multiple ethics infractions. In re Delgado-Shafer, 197 N.J. 018 (2008). Specifically, respondent misrepresented to a financial institution that she was holding \$41,000 on behalf of her clients in a real estate transaction, submitted an altered bank statement in support of her statement, commingled personal funds in her trust account, committed recordkeeping violations, and engaged in a conflict of interest by representing her brother in a foreclosure action, stemming from her failure to pay the mortgage on a residential property owned by her brother, who permitted her and her family to occupy the

premises as their primary residence. Ibid. Respondent has not sought reinstatement.

Service of process was proper. On December 7, 2010, the OAE sent a copy of the formal ethics complaint to respondent's office address, 3199 Federal Street, Camden, New Jersey 08105, and to her home address, 22 Sunflower Circle, Lumberton, New Jersey 08048, via regular and certified mail, return receipt requested. The certified letter sent to her office address was returned as unclaimed. The letter sent by regular mail was not returned. Both the certified letter and the letter sent by regular mail to her home address were returned and marked "not deliverable as addressed - unable to forward."

On January 25, 2011, a disciplinary notice stating that a formal ethics complaint had been filed against respondent was published in the "Burlington County Times" and in "The Courier Post." Another disciplinary notice was published in the "New Jersey Law Journal," on January 31, 2011.

As of March 3, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

The formal ethics complaint consisted of five counts. Most of the charges brought against respondent arise out of her representation of a client named John M. Moloney.

First Count

In the first count of the complaint, respondent was charged with failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b). Specifically, on January 11, 2010, the OAE docketed an ethics grievance referred by the District IIIB fee arbitration committee. On January 14, 2010, OAE Deputy Ethics Counsel Melissa A. Czartoryski wrote to respondent at her home address, and requested that she reply to the grievance, in writing, within ten days. Respondent did not reply to Czartoryski's letter.

On March 12, 2010, the OAE wrote to respondent's court-appointed attorney in other pending ethics proceedings, Arthur F. Riden, and asked him to provide respondent with a copy of the OAE's January 14, 2010 letter and to advise respondent that, if she failed to reply, she would be charged with a violation of RPC 8.1(b).

On March 31, 2010, the OAE confirmed with Riden that respondent continued to receive mail at both her home and office

addresses. On that same date, the OAE wrote to respondent, at her office address, and requested that she reply to the grievance within ten days. She did not.

Second Count

The second count of the complaint alleged that, in February 2007, John M. Moloney retained respondent to represent him in a Burlington County post-judgment divorce proceeding. In May of that year, Moloney paid respondent a \$10,000 retainer. Respondent had not regularly represented Moloney in the past. Moloney could not recall whether he had entered into a retainer agreement with respondent, but testified that, if he had, respondent had not given him a copy. Respondent was charged with having violated RPC 1.5(b).

Third Count

The third count of the complaint alleged that Moloney retained respondent to file a post-judgment motion on the issues of custody and parenting time and that, despite payment of the \$10,000 retainer, respondent never filed a motion.

In July 2007, Moloney's former spouse, Patricia, filed a motion seeking modification of custody and other relief.

Respondent filed an untimely cross-motion, but the court considered both motions and entered an order.

In the fall of 2008, Patricia filed a motion to compel Moloney to pay for various medical bills and child care expenses. The return date of the motion was November 21, 2008.

Moloney directed respondent to file a cross-motion seeking a credit for child care expenses that he had paid and the resolution of a Christmas visitation issue. Although respondent was granted an adjournment of the motion to December 19, 2008, she never filed a cross-motion. Patricia's motion was granted as unopposed.

On that same date, respondent informed Moloney that, effective January 2, 2009, she would be suspended from the practice of law for two years and that, therefore, he would have to retain new counsel. Nevertheless, on December 23, 2008, respondent sought an order to show cause on the Christmas visitation issue, which was denied as non-emergent and procedurally deficient, insofar as respondent had failed to prove that she had paid the filing fee.

Respondent then filed a motion for reconsideration of the December 19, 2008 order, returnable on January 23, 2009, which was not only after Christmas but also after the effective date

of her suspension. According to attorney Susan Dargay, whom Moloney retained to handle the pending matter, the motion was deficient in that, contrary to the assertions made in the proof of service, Patricia had not been served with the motion. Further, according to Dargay, the motion "was missing the requisite proofs, failed to address the child care offset issue and addressed previously decided matters." Thus, on January 30, 2009, Dargay withdrew the motion filed by respondent.

Moloney instructed Dargay not to proceed with a new motion. He could not afford further legal representation, inasmuch as he had already paid respondent \$16,105 by that time.

Respondent was charged with having violated RPC 1.1(a) and RPC 1.3.

Fourth Count

The fourth count of the complaint alleged that, on September 17, 2009, a fee arbitration panel awarded Moloney \$7,459.77, which respondent was required to pay within thirty days. Respondent never refunded the fee to Moloney. Respondent was charged with having violated RPC 3.4(c).

Fifth Count

The fifth count of the complaint alleged that, at approximately 5:00 p.m. on Christmas Eve 2008, respondent's brother, Miguel Delgado, showed up at Moloney's place of employment and gave him nine invoices for legal services allegedly rendered by respondent from the inception of the attorney-client relationship up through December 24, 2008. This was the first time that Moloney had received any invoice from respondent. At the time, Miguel was either employed by, or acting at the direction of, respondent.

The invoices, which reflected a total balance due of \$2,339.62, were enclosed with a letter from respondent requesting that payment be given to Miguel. Moloney informed Miguel that, due to the short notice, he would not be able to give him the payment at that time. However, he stated that he would pay the bill "in a few days." Moloney and Miguel presumably went their separate ways.

Later that evening, still on Christmas Eve, a security guard at Moloney's place of employment called him at home, informing him that Miguel had returned and wanted Moloney to bring the check to him. Respondent also called Moloney and insisted that he pay the invoice immediately. Moloney told

respondent that he did not have the funds but that he could give her a post-dated check.

Moloney returned to his employer's and gave Miguel the post-dated check. For reasons that are not clear in the record, respondent immediately called Moloney and insisted that he provide another check. Moloney issued a second post-dated check, dated for approximately three weeks later.

On December 27, 2008, Miguel went to Moloney's home to return the second check and to request that Moloney write a third check. Miguel must have told Moloney that the check could not be post-dated three weeks because the third check issued by Moloney was dated December 29, 2008. Moloney told Miguel that he did not have sufficient funds in his account to cover the check and that, therefore, the check should not be negotiated until Moloney informed respondent that the funds were available.

Despite Moloney's instructions, respondent attempted to negotiate the check, on December 29, 2008. It bounced. On January 2, 2009, Moloney stopped payment on the check. Respondent attempted to re-negotiate the check on January 5, 2009. Again, it bounced.

At some unidentified time, Miguel informed Moloney that, if he did not cover the check, the motion for reconsideration would

be "sent back by the Court." "Because of these threats," on January 9, 2009, Moloney obtained an "official check," in the amount of \$1800, which he remitted to respondent.

Respondent was charged with having violated RPC 3.2, RPC 5.3(c)(1), RPC 8.4(a), and RPC 8.4(d).

We now turn to our findings, count by count.

The facts recited in the complaint support 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).

First Count

RPC 8.1(b) prohibits attorneys from knowingly failing to respond to a lawful demand for information from a disciplinary authority. When respondent failed to comply with the OAE's request for a written reply to the grievance, she violated this rule.

Second Count

When a lawyer has not regularly represented a client, RPC 1.5(b) requires the lawyer to communicate to the client, in

writing, the basis or rate of the fee, before or within a reasonable time after commencing the representation. More specifically, in a civil family action, "every agreement for legal services to be rendered . . . shall be in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client." R. 5:3-5(a). Here, the complaint alleged that, prior to respondent's retention in the post-judgment matrimonial matter, she had not regularly represented Moloney. Moloney could not recall whether he had signed a retainer agreement. He claimed, however, that, if he did, respondent did not provide him with a copy of it.

These assertions are insufficient to clearly and convincingly sustain the charge that respondent violated RPC 1.5(b). Moloney's inability to remember whether he had signed a retainer agreement precludes a finding that respondent never presented him with a writing setting forth the basis or rate of her fee. Accordingly, we determine to dismiss this charge.

Third Count

Respondent repeatedly failed in her duty to represent her client competently (RPC 1.1(a)) and diligently (RPC 1.3). In

May 2007, Moloney paid her a \$10,000 retainer and instructed her to file a custody motion on his behalf. She never did so.

In July 2007, Moloney's former wife, Patricia, filed a motion on the issue of custody. Although respondent filed a cross-motion, it was untimely. The untimeliness, however, did not result in the court's refusal to consider the cross-motion.

In the fall of 2008, Patricia filed another motion, which, despite Moloney's direction, respondent never opposed. She also never cross-moved for relief pertaining to the Christmas visitation issue. Patricia's motion was granted as unopposed.

After informing Moloney, on December 19, 2008, that she would be suspended from the practice of law, effective January 2, 2009, and advising him to retain new counsel, respondent went ahead, on December 23, 2008, and filed an order to show cause regarding the Christmas visitation issue, which was denied, in part, because she had failed to prove that she had paid the filing fee.

The next day, Christmas Eve, respondent filed a motion for reconsideration of the order granting Patricia's unopposed motion, which also was procedurally deficient on a simple issue, namely respondent had not served Patricia with the motion, despite assertions in the proof of service attesting to the

contrary. The motion was so substantively deficient that Moloney's new lawyer withdrew it.

Respondent's failure to file a motion at her client's direction, failure to oppose a motion at her client's direction, failure to file a motion that complied with simple procedural requirements, and filing another motion so procedurally and substantively deficient that subsequent counsel had to withdraw it constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3.

Fourth Count

An attorney who fails to abide by a fee arbitration award violates RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Kivler, 197 N.J. 255 (2009) (among other things, attorney failed to comply with fee arbitration awards that had been entered against him in three client matters; attorney was only charged with having violated RPC 3.4(c), although we noted, in our decision, that his conduct violated RPC 8.4(d) as well), and In re Harris, 182 N.J. 594, 603-05 (2005) (among other things, attorney refused to comply with a fee arbitration committee's determination that she refund

the unearned portion of the fee paid to her in two client matters). Respondent was not charged with violating RPC 8.4(d) as a result of her failure to comply with the District IIIB Fee Arbitration Committee determination, requiring her to refund \$7,459.66 to Moloney. However, she was charged with RPC 3.4(c), which she did violate, when she failed to refund Moloney's fee to him.

Fifth Count

The fifth count of the complaint contains the most troubling allegations against respondent, evidencing a shake down of her own client. All nine invoices that Miguel took to Moloney on Christmas Eve of 2008, were generated on that date. Of the nine, eight had already been paid. The \$2339.62 balance on the final invoice represented respondent's fees for the work performed on Moloney's behalf in the post-judgment matrimonial matter, between December 18 and 24, 2008.¹ Thus, by sending Miguel to Moloney's place of employment, at the close of

¹ Inexplicably, one of the charges is for a two-hour court appearance "re: Mom's Dental Bill."

business on Christmas Eve, respondent was seeking immediate payment of work that she had performed only within the past six days.

Through Miguel, respondent harassed and threatened Moloney, beginning on Christmas Eve and continuing past the effective date of her January 2, 2009 suspension, in order to squeeze him for payment for the work she had done only days before she issued the invoice on Christmas Eve. Acts of intimidation directed to a client constitute a violation of RPC 3.2 and RPC 8.4(d). In particular, Miguel's threat to Moloney that the motion would be sent back by the court, if he did not pay the outstanding bill, violated these two rules. Although it is not true that the court would refuse to consider a motion because of a fee dispute between the attorney and the client, Moloney did not know that. Miguel's threat, which was utterly false, might have created the impression that there is some kind of "pay to play" arrangement within the judicial system. Although it was Miguel, not respondent, who made the threat, Miguel was acting as respondent's representative, when he made the misrepresentation. By acting through Miguel, respondent also violated RPC 8.4(a), which prohibits an attorney from violating the RPCs through the acts of another.

On the other hand, we are unable to find that respondent violated RPC 5.3(c)(1), which provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or ratifies the conduct involved[.]

Although the rule's language, arguably, could apply to an attorney's emissary or, in this case, a henchman, we note that the comment to the American Bar Association's Model Rule refers to assistants, such as secretaries, investigators, law clerks, and paralegals, be they employees or independent contractors. Although Miguel was respondent's agent and representative, it is not clear that he was her employee or even an independent contractor. The complaint alleges, in the alternative, that Miguel was either her employee or acting at her direction.

We find that, more appropriately, Miguel was acting at respondent's direction, rather than acting as an employee. Further, even if the scope of the rule were to be interpreted broadly enough to encompass the present situation, this is not the case to test that interpretation. Because this is a default, our findings are limited to the allegations of the

complaint. We do not have the benefit of a record, developed at a hearing, where this issue could have been fully explored. Thus, we do not find a violation of RPC 5.3(c)(1) in this case.

There remains for determination the discipline to be imposed for respondent's violations of RPC 1.1(a), RPC 1.3, RPC 3.2, RPC 3.4(c), RPC 8.1(b), RPC 8.4(a), and RPC 8.4(d).

The worst of respondent's conduct involved her use of Miguel to pressure Moloney to pay her bill on the very day that it was generated, Christmas Eve, which was only a day or so after the services were rendered and then to threaten Moloney that the court would reject the motion for reconsideration, if the bill were not paid. An attorney who exhibited similar conduct received a (strong) censure. In re Markham, 202 N.J. 568 (2010).

In that case, in 2006, Jacqueline DiBartolo retained Markham to represent her in a divorce action. In the Matter of Theresa A. Markham, DRB 10-104 (June 25, 2010). DiBartolo and her spouse negotiated a settlement, with their respective attorneys acting as scriveners of the agreement. Ibid. Markham also was to represent DiBartolo at the divorce hearing. Ibid.

Markham unsuccessfully sought payment of her fee from DiBartolo, prior to the hearing. Ibid. Thus, she directed her

secretary to threaten DiBartolo that, unless she paid the bill in full prior to the hearing, Markham might either withdraw from the representation or refuse to show up for the hearing. Ibid.

DiBartolo's financial situation precluded her from paying the bill in full prior to the hearing. Ibid. However, she tried to make a \$50 installment payment prior to the court appearance, but Markham considered the payment "inadequate." Ibid.

On the date of the hearing, Markham presented DiBartolo with a consent lien on all of her assets and threatened DiBartolo that, if she did not sign the document or pay her in full, her divorce would not go forward that day. During their discussions, Markham hovered over DiBartolo and yelled at her, causing DiBartolo to feel "trapped, overwhelmed, threatened and pressured." DiBartolo, nevertheless, refused to sign the document. Respondent grabbed the document from her but proceeded to represent her at the divorce hearing, which took place as scheduled.

For this particular conduct, Markham was found guilty of violating RPC 8.4(d) and RPC 5.3, presumably (c)(1) (holding attorney responsible for conduct of a nonlawyer when the lawyer directs the nonlawyer to engage in conduct that would violate

the RPCs if the attorney had engaged in that manner). She also was found guilty of dishonesty (RPC 8.4(c)), based on her failure to turn over the original lien document to the ethics investigator, and RPC 8.4(a).

In this case, considering only respondent's conduct toward Moloney, carried out through Miguel, we find that it merits, at least, a strong censure, as was issued in Markham.

There are, however, respondent's other violations to consider. Gross neglect and lack of diligence generally result in an admonition. See, e.g., In re Russell, 201 N.J. 409 (2009) (attorney failed to file answers to divorce complaints against her client causing 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 the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney's inaction in a personal injury matter caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (attorney was guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); and In the

Matter of Jonathan H. Lesnik, DRB 02-120 (May 22, 2000) (attorney failed to file an answer in a divorce matter, resulting in a final judgment of default against the client; the attorney also failed to keep the client informed about the status of the case).

Ordinarily, an admonition, too, is imposed for an attorney's failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. If an attorney has been disciplined before, a reprimand will generally be imposed for a single failure to cooperate with disciplinary authorities, but only if the ethics record is not significant. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Respondent also failed to comply with a fee arbitration determination, requiring him to refund \$7000 to Moloney, a

violation of RPC 3.4(c). An attorney who ran afoul of that rule received a reprimand. In re Kersey, 170 N.J. 409 (2002).


Here, in addition to respondent's serious ethics infractions, there are aggravating factors to consider. First, through Miguel, respondent made a misrepresentation to Moloney that the court would return the motion, if her legal fee were not paid. Second, respondent has an ethics history consisting of a two-year suspension for conduct that came very close to knowing misappropriation and also included multiple misrepresentations on her part. Third, respondent has defaulted in this matter, which requires enhancement of the otherwise appropriate discipline. In re Kivler, 193 N.J. 332, 342 (2008) ("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").

Under the totality of the circumstances, we determine to impose a one-year prospective suspension on respondent for her violations of RPC 1.1(a), RPC 1.3, RPC 3.2, RPC 3.4(c), RPC 8.1(b), RPC 8.4(a), and RPC 8.4(d), coupled with the above aggravating factors.

Vice-Chair Frost and 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

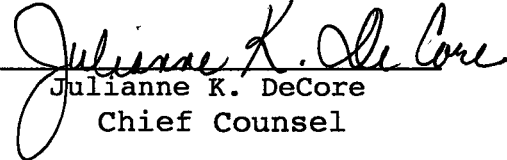
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Dorca I. Delgado-Shafer
Docket No. DRB 11-087

Decided: September 14, 2011

Disposition: One-year prospective suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost						X
Baugh		X				
Clark						X
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		7				2


Julianne K. DeCore
Chief Counsel