SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 11-462, 12-047, and 12-107
District Docket Nos. XB-2011-0034E, VII-2011-0031E, and XIV-2011-0249E

IN THE MATTERS OF

ELAINE T. SAINT-CYR

AN ATTORNEY AT LAW

Decision

Decided: June 18, 2012

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

These matters came before us on certifications of default filed by the District XB Ethics Committee (DEC XB) (DRB 11-462), the District VII Ethics Committee (DEC VII) (DRB 12-047), and the Office of Attorney Ethics (OAE) (DRB 12-107), pursuant to R. 1:20-4(f). They have been consolidated for the purpose of imposing a single form of discipline.

In both DEC matters, respondent was charged with gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b)), and failure to cooperate with disciplinary authorities (RPC 8.1(b)). In the DEC XB matter, respondent also was charged with engaging in a pattern of neglect (RPC 1.1(b)), violating the RPCs (RPC 8.4(a)), and committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects (RPC 8.4(b)).

In the OAE matter, respondent was charged with practicing while suspended, a violation of RPC 5.5(a)(1) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a two-year suspension for the totality of respondent's misconduct in all three matters.

Respondent was admitted to the New Jersey bar in 1993. At the relevant times, she maintained an office for the practice of law in Denville.

On March 26, 2010, respondent was temporarily suspended, effective April 29, 2010, and ordered to pay a $500 sanction to

the Disciplinary Oversight Committee, for failure to comply with a determination of the District X Fee Arbitration Committee. In re Saint-Cyr, 202 N.J. 6 (2010). The 2010 temporary suspension remains in effect.

On June 7, 2012, the Supreme Court imposed a censure on respondent, in a default matter, for her failure to file an affidavit of compliance with R. 1:20-20(b)(15), following her temporary suspension. In re Saint-Cyr, ___ N.J. ___ (2012).

THE ESCOBAR MATTER (DRB 11-462)

Service of process was proper. On October 25, 2011, the DEC XB sent a copy of the formal ethics complaint to respondent's last known home address, 341 Diamond Spring Road, Denville, New Jersey 07834, by regular and certified mail, return receipt requested.

The certified letter was unclaimed and returned to the DEC XB. The letter sent by regular mail was not returned.

On November 16, 2011, the DEC XB sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed her that, if she

failed to do so, the record would be certified directly to us for the imposition of sanction.

The certified letter was unclaimed and returned to the DEC XB. The letter sent by regular mail was not returned.

As of December 13, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC XB certified this matter to us as a default.

According to the complaint, on October 2, 2008, grievant Luis F. Escobar was fired by his employer. In January 2009, Escobar contacted respondent, who agreed to represent him in an action against his former employer. Shortly thereafter, Escobar was hospitalized. During his recovery, respondent kept in contact with his wife.

After Escobar recovered, he and respondent executed a retainer agreement, on October 7, 2009. The agreement identified the contracted legal services as "EEOC Complaint/Wage Discrimination," for which respondent would receive a contingent fee. At the time the agreement was executed, respondent told Escobar that she "had the case completed and [sic] was ready to be filed in court."

Although respondent updated Escobar on his case during "the whole year of 2009," in 2010, it became difficult for him to get

in touch with her. Toward the end of 2010, whenever Escobar called respondent, her voicemail box was full. When he went to her office, he discovered that it had been vacated by respondent and that it was now occupied by another attorney. The attorney told Escobar that respondent had "moved out a few weeks back."

In February 2011, Escobar consulted with another attorney, who informed him that respondent had been suspended from the practice of law in April 2010. Escobar then returned to respondent's former office and talked to a secretary there, who gave him respondent's cell phone number. Escobar called respondent, who answered the phone and informed him that she was suspended from practicing law and that she had never filed the lawsuit. Respondent told Escobar that she would call him the next day, but she never did.

On March 15, 2011, Escobar filed a grievance against respondent. On April 6, 2011, the DEC XB investigator sent a copy of the grievance to respondent's business address and requested that she provide a written reply within ten days. The letter was returned "due to an insufficient address."

On April 21, 2011, the investigator sent another letter to respondent at a post office box address. The letter enclosed the April 6, 2011 letter and, presumably, again requested

respondent to provide the investigator with a written reply to the grievance. Although the letter was not returned to the investigator, respondent failed to provide a written reply to the grievance.

On May 5, 2011, another letter was sent to respondent's post office box address, by regular and certified mail, return receipt requested. The certified letter was unclaimed and returned to the DEC XB. The letter sent by regular mail was not returned. The investigator repeated the process in a May 31, 2011 letter, but, still, respondent did not reply.

The investigator also made several telephone calls to respondent, at various telephone numbers. He was unsuccessful, as one of the numbers was out of service, the voicemail box for another number was full, and the third number, he was told, did not belong to respondent.

Based on respondent's failure to file a lawsuit or claim on Escobar's behalf, her statement to him that the case was ready to be filed, her failure to reply to his inquiries, and her failure to notify him that she had been suspended from the practice of law, she was charged with having violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, and RPC 1.4(b). Further, respondent was charged with having violated RPC 8.1(a) by

failing to reply to the grievance. Finally, she was charged with having violated RPC 8.4(a) and RPC 8.4(b), based on her conduct "in this matter when combined with the other conduct as alleged in this pleading."

The facts recited in the complaint support most, but not all, 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).

RPC 1.1(a) prohibits a lawyer from handling or neglecting a matter "in such manner that the lawyer's conduct constitutes gross negligence." RPC 1.1(b) prohibits a lawyer from exhibiting "a pattern of negligence or neglect in the lawyer's handling of legal matters generally." RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." RPC 1.4(b) requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

RPC 8.1(b) prohibits an attorney from "knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority." RPC 8.4(a) deems the violation of the RPCs an act of professional misconduct. RPC 8.4(b) also deems

the commission of "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" as an act of professional misconduct.

In this case, the allegations of the complaint support the finding that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 8.1(b), and RPC 8.4(a). They do not, however, support the finding that she violated either RPC 1.1(b) or RPC 8.4(b).

Escobar's employment was terminated on October 2, 2008. Respondent agreed to represent him in a discrimination claim in January 2009. They formalized their agreement in October 2009, at which time respondent informed Escobar that she had the case "completed" and "ready to be filed in court." Nevertheless, by February 2011, when Escobar sought assistance from another lawyer, respondent had done nothing. Respondent's neglect and her lack of diligence in the Escobar matter violated RPC 1.1(a) and RPC 1.3.

Moreover, respondent's failure to communicate with Escobar "for a couple of weeks toward the end of 2010" constituted a

violation of RPC 1.4(b)[1] and her failure to reply to the DEC XB investigator's letters was a violation of RPC 8.1(b). Her violation of the RPCs was a violation of RPC 8.4(a).

Respondent did not engage in a pattern of neglect, however. With the exception of her failure to file the complaint, the allegations underlying this charge do not support a pattern of neglect but, rather, a pattern of lack of communication, which does not satisfy the requirements of RPC 1.1(b). Therefore, we dismiss that charge. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12) (concluding that a minimum of three instances of neglect is necessary to establish a pattern of neglect).

Similarly, the allegations of the complaint do not establish that respondent committed any crime. Therefore, we dismiss the RPC 8.4(b) charge.

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[1] Although the complaint also charged respondent with having violated RPC 1.4(b), based on her failure to notify Escobar that she had been temporarily suspended from the practice of law, we note that she was recently disciplined for this dereliction when she received a censure for her failure to comply with R. 1:20-20.

THE LYGA MATTER (DRB 12-047)

Service of process was proper. On November 30, 2011, the DEC VII sent a copy of the formal ethics complaint to respondent's last known home address, 341 Diamond Spring Road, P.O. Box 1254,[2] Denville, New Jersey 07834, by regular and certified mail, return receipt requested.

The certified letter was unclaimed. The letter sent by regular mail was not returned.

On December 23, 2011, the DEC VII sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed her that, if she failed to do so, the record would be certified directly to us for the imposition of sanction.

The certified letter was unclaimed. The letter sent by regular mail was not returned.

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[2] In the DEC XB matter, the address did not include the post office box number.

As of January 12, 2012, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC VII certified this matter to us as a default.

According to the complaint, on an unidentified date, grievant Michael Lyga retained respondent to represent him in "various criminal actions concerning [his] guilty plea and incarceration." He paid respondent $11,800.

Lyga and respondent had "a few" conferences at the New Jersey State Prison, where Lyga "clearly stated . . . what he expected from [her] representation." In addition to these conferences, he received one letter from respondent.

When court dates were scheduled, Lyga informed respondent. However, she failed to appear in court on his behalf and she did not respond to his inquiries. In addition, she failed to take any action to "correct" the "difficulties" that Lyga told her that he was experiencing in prison.

The DEC VII investigator made numerous telephone calls to respondent, which she neither answered nor returned. Respondent also ignored three letters that the investigator sent to her, which enclosed the grievance and requested a written reply.

Based on these allegations, respondent was charged with gross neglect, lack of diligence, failure to communicate with

the client, and failure to cooperate with disciplinary authorities.

The facts recited in the complaint support most, but not all, 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).

The allegations of the complaint are not sufficient to sustain a finding that respondent exhibited gross neglect or lacked diligence in handling Lyga's matters. The complaint does not specify the scope of respondent's representation of Lyga. Although respondent failed to appear for court dates on Lyga's behalf, nothing in the complaint suggests that these court dates had anything to do with the scope of the representation. This could explain why respondent did not appear on Lyga's behalf. Thus, we dismiss the RPC 1.1(a) and RPC 1.3 charges.

Respondent violated RPC 1.4(b), however, by failing to reply to Lyga's inquiries. She also violated RPC 8.1(b) when she ignored the DEC VII investigator's attempts to communicate with her, particularly in writing, and when she failed to provide the investigator with a written reply to the grievance.

THE OAE MATTER (DRB 12-107)

Service of process was proper. On October 25, 2011, the OAE sent a copy of the formal ethics complaint to respondent's last known home address, 341 Diamond Spring Road, Denville, New Jersey 07834, and to P. O. Box 1254 in Denville, by regular and certified mail, return receipt requested.

The certified mail receipt for the letter sent to respondent's home address was returned to the OAE unsigned. The certification of the record states that the letter was returned to the OAE, as it had gone unclaimed. The letter sent by regular mail was not returned. According to the certification of the record, "[t]here is no record of the disposition of the certified mail that was sent to Respondent's post office box."

As of March 28, 2012, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

As indicated previously, respondent was temporarily suspended from the practice of law, effective April 29, 2010. The suspension remains in effect.

On May 5, 2011, attorney Pamela Mainardi informed the OAE that respondent had practiced law, during her temporary suspension, in connection with an Essex County divorce case

between parties identified only as "C.R." (Mainardi's client) and "I.R." (respondent's client). The facts underlying respondent's misconduct are set forth below.

On May 24, 2010, Mainardi filed an order to show cause in the divorce case and telephoned respondent to so inform her. During that conversation, respondent told Mainardi that she no longer represented I.R., who could not afford to pay her. Later that day, however, respondent called Mainardi and informed her that she was representing I.R., after all.

On May 25, 2010, Mainardi "Fed-Ex'd" the order to show cause to respondent. The next day, respondent prepared a written reply to the order to show cause, which she presumably filed on that date.

On May 27, 2010, Mainardi and respondent appeared in court to argue the order to show cause. For almost a year after that appearance, Mainardi and respondent exchanged letters, telephone calls, and emails in an attempt to resolve several issues in the divorce case. On May 5, 2011, Mainardi learned that respondent had been suspended since April 29, 2010. During their communications, respondent never told Mainardi that she had been suspended. She also did not tell the court.

During an interview with the OAE, on December 28, 2011, respondent initially stated that she did not remember having represented I.R. in May 2010. Later during the interview, she stated that she did remember representing the client. She told the OAE that she did not formally represent I.R. Rather, she merely "help[ed] her out" with the divorce matter.

With respect to her suspension, respondent told the OAE that, in May 2010, she did not know that she had been temporarily suspended. According to the ethics complaint:

> 15. Respondent also claimed during the interview that she never knew she was temporarily suspended because she was not opening her mail due to illness; however, she told OAE investigators that she assumed she had been suspended from practice based on all the correspondence she received from ethics authorities.
>
> 16. Respondent also told OAE investigators during the interview that she actually became aware of the suspension imposed by the Court . . . "only recently," when her husband opened the Court's letter for her.
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> [C¶15-C¶16.][3]

[3] "C" refers to the formal ethics complaint.

Based on these facts, respondent was charged with having violated RPC 5.5(a)(1) and RPC 8.4(d).

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).

Respondent was temporarily suspended from the practice of law, effective April 29, 2010. The suspension remains in effect.

RPC 5.5(a)(1) prohibits an attorney from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Under RPC 8.4(d), "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." By practicing law while suspended, respondent committed a per se violation of RPC 5.5(a)(1). She also violated RPC 8.4(d) by disobeying the Court's order.

There remains for determination the quantum of discipline to be imposed on respondent for her violations of multiple ethics rules in three matters, all defaults.

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the ethics investigator's requests for

information about the grievance; the attorney also failed to communicate with the client).

In the DEC matters, respondent exhibited gross neglect and lack of diligence in one matter and failed to communicate with the client and failed to cooperate with disciplinary authorities in two matters. Thus, a reprimand would be the minimum measure of discipline for her unethical conduct. However, we must also consider the OAE matter, as well as aggravating factors (the prior censure, the default nature of these proceedings, and other factors detailed below).

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors:

- One-year suspension: In re Bowman, 187 N.J. 84 (2006) (during a period of suspension, attorney maintained a law office where he met with clients, represented clients in court, and acted as Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (attorney practiced law in two cases while suspended and committed substantial

recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Lisa, 158 N.J. 5 (1999) (attorney appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); and In re Hollis, 154 N.J. 12 (1998) (in a default matter, attorney continued to represent a client during his period of suspension; the attorney had been suspended for three years on two occasions; no reasons given for only a one-year suspension).

- Two-year suspension: In re Wheeler, 140 N.J. 321 (1995) (attorney practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities).[4]
- Three-year suspension: In re Marra, 183 N.J. 260 (2005) (attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In

[4] In that same order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

re Cubberley, 178 N.J. 101 (2003) (attorney solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (attorney handled three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior two-year suspension for practicing while suspended); In re Kasdan, 132 N.J. 99 (1993) (attorney continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, deliberately continued to practice law, misrepresented her status as

an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); and In re Beltre, 130 N.J. 437 (1992) (attorney appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to this Board about maintaining a bona fide office, and failed to cooperate with an ethics investigation' prior three-month suspension).

- Disbarment: In re Walsh, Jr., 202 N.J. 134 (2010) (in a default, attorney practiced law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievances; in addition, the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history:

reprimand in 2006, censure in 2007, and two suspensions in 2008); In re Olitsky, 174 N.J. 352 (2002) (attorney agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; the attorney also made misrepresentations to the court, and was convicted of stalking a woman with whom he had had a romantic relationship, and of engaging in the unauthorized practice of law; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); In re Costanzo, 128 N.J. 108 (1992) (attorney practiced law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters

in order to permit them to make informed decisions about the cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand); and In re Goldstein, 97 N.J. 545 (1984) (attorney was guilty of misconduct in eleven matters and practiced law while temporarily suspended by the Court and in violation of an agreement with the Board that he limit his practice to criminal matters).

- But see In re Kersey, 185 N.J. 130 (2005) (on the OAE's recommendation and the Board's determination, the Court agreed that a reprimand was sufficient discipline for an attorney who was disbarred in New Hampshire for disobeying a court order for the production of his files after a suspension and practicing law while suspended in that state;[5] the attorney filed pleadings with a New Hampshire court and was involved in federal court cases; the attorney asserted -- and this Board found -- that in the state case he was defending against an attorney's fee

[5] In New Hampshire, a disbarred attorney may petition for reinstatement after two years.

awarded against him personally and therefore he was acting pro se, as the real party in interest; in the federal case, there was no evidence that there was a federal court order prohibiting the attorney from practicing in federal courts; prior reprimand).

Here, we determine to impose a two-year suspension on respondent for the totality of her misconduct in all three default matters. A sanction as severe as disbarment is unwarranted because, in the disbarment cases, the attorneys represented several clients, committed a number of other unethical acts, and some of them had extensive ethics histories. See, e.g., Walsh, supra, 202 N.J. 134 (default; twelve clients; gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities; extensive disciplinary history); Olitsky, supra, 174 N.J. 352 (eight clients; gross neglect in three matters; signed another attorney's name on four bankruptcy petitions; made misrepresentations to a court; and was convicted of stalking a woman with whom he had been romantically involved; extensive disciplinary history); Costanzo, supra, 128 N.J. 108 (numerous client matters, plus gross neglect, pattern of neglect, lack of diligence, failure to communicate, and failure to reduce to

writing the rate or basis of fee; prior private reprimand and reprimand); and Goldstein, supra, 97 N.J. 545 (eleven matters, in addition to violation of agreement to limit his practice to criminal matters).

Similarly, a three-year suspension would be too severe. See, e.g., Marra, supra, 183 N.J. 260 (three client matters; attorney also filed a false affidavit with a court; extensive disciplinary history); Cubberley, supra, 178 N.J. 101 (attorney made a misrepresentation to the client, whom he continued to represent after his suspension; failed to cooperate with the OAE's requests for information; "egregious" disciplinary history); Wheeler II, supra, 163 N.J. 64 (three client matters; prior two-year suspension for practicing while suspended); Kasdan, supra, 132 N.J. 99 (continued to represent clients even after the Court expressly denied her request for a stay of the suspension, made misrepresentations to adversaries and to the courts where she appeared; failed to maintain complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); and Beltre, supra, 130 N.J. 437 (attorney appeared in court, misrepresented his status to a judge, failed to carry out his responsibilities as an escrow agent, lied to the Board about

maintaining a bona fide office, and failed to cooperate with the ethics investigation; prior three-month suspension).

In our view, a two-year suspension is the appropriate discipline, given respondent's serial defaults, the prior censure, and the absence of any compelling mitigation weighing in her favor. On the one hand, respondent does not have an extensive disciplinary history, as did some of the attorneys who have received a one-year suspension. See, e.g., In re Marra, supra, 170 N.J. 411 (one-year suspension for practicing law in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension) and In re Hollis, supra, 154 N.J. 12 (attorney suspended for one year in a default matter for continuing to represent a client during his period of suspension; the attorney had been suspended for three years on two occasions; no reasons given for only a one-year suspension).

On the other hand, several other factors, when considered together, outweigh the absence of an extensive disciplinary

history and serve to justify a suspension of two years. First, unlike two of the attorneys who received one-year suspensions, there are no compelling circumstances that mitigate respondent's transgressions. See, e.g., In re Bowman, supra, 187 N.J. 84 (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and acted as Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation) and In re Lisa, supra, 158 N.J. 5 (one-year suspension for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension).

Second, respondent is a serial defaulter, having defaulted in every disciplinary matter brought against her. In December 2011, she was censured, in a default matter, for failure to file

an affidavit of compliance with R. 1:20-20(b)(15). She has defaulted in all three matters now before us. Seemingly, respondent does not care about either her ethical obligations to her clients or her duty to cooperate with disciplinary authorities, including the Court. "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).

There are other aggravating factors to consider as well. First, although respondent was not charged with practicing while suspended in the Escobar matter, the allegations of the complaint establish that she continued to represent him during the period of suspension. Second, in the OAE matter, although respondent was not charged with misrepresentation, the fact is that she did not tell Mainardi or the judge handling the order to show cause that she was suspended. Third, respondent's temporary suspension has now been in effect for more than two years because she has not complied with the order of temporary suspension by paying the fee award and the sanction, thereby demonstrating a lack of regard for the disciplinary system that we cannot abide.

Based on her conduct in these matters and the multiple aggravating factors, we determine to impose a two-year suspension on respondent for the totality of her misconduct.

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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Elaine Saint-Cyr
Docket Nos. DRB 11-462, 12-047, and 12-107

Decided: June 18, 2012

Disposition: Two-year suspension

Members	Disbar	Two-year suspension	Reprimand	Dismiss	Disqualified	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
Julianne K. DeCore
Chief Counsel