

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-241
District Docket No. XIV-2012-0207E

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

Decision

Decided: December 17, 2013

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 formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with a client), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and client abandonment. We find that

respondent committed all of these infractions, with the exception of RPC 8.4(c) and client abandonment, and determine to impose a one-year suspension for the misconduct.

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. Presently, her license to practice law is suspended.

On January 2, 2009, respondent was suspended for two years for multiple ethics infractions. In re Delgado-Shafer, 197 N.J. 18 (2008) (Delgado-Shafer I). Among other things, she misrepresented to a financial institution that she was holding \$41,000 on behalf of her clients in a real estate transaction, attached an altered bank statement in support of her false claim, commingled personal and trust funds in her trust account, committed recordkeeping violations, and engaged in a conflict of interest by representing her brother in a foreclosure action that was instituted as a result of her failure to timely remit the monthly mortgage payments on a residential property owned by her brother, who permitted her to live there, in exchange for her making those payments. Respondent did not seek reinstatement.

On November 17, 2011, the Court imposed a one-year prospective suspension on respondent, in a default matter, for failure to cooperate with disciplinary authorities, gross neglect, lack of diligence, knowingly disobeying an obligation under the rules of a tribunal, failure to treat with courtesy and consideration all persons involved in the legal process, violation of the RPCs through the acts of another, and conduct prejudicial to the administration of justice. In re Delgado-Shafer, 208 N.J. 376 (2011) (Delgado-Shafer II). Specifically, respondent failed to file a custody motion on her client's behalf, failed to oppose a motion filed by her adversary, filed two motions that were dismissed as procedurally deficient, failed to comply with a fee arbitration award, and directed her brother to commit acts of intimidation against the client. She also failed to reply to the grievance that the client had filed against her.

On May 2, 2012, the Court suspended respondent for three years, effective November 18, 2012 and until further order of the Court, for filing six successive and deficient petitions for bankruptcy for the purpose of delaying a civil case pending against her, failing to file an affidavit of compliance with R. 1:20-20, making misrepresentations to a court in two matters,

and failing to cooperate with disciplinary authorities. In re Delgado-Shafer, 210 N.J. 127 (2012) (Delgado-Shafer III). The failure-to-cooperate finding stemmed from respondent's failure to reply to the grievances of two clients and to submit a R. 1:20-20 affidavit, after she had been suspended in Delgado-Shafer I. In addition, she failed to participate in the pre-hearing stage of the matter and did not appear at the ethics hearing.

In December 2012, the New Jersey Lawyers' Fund for Client Protection (CPF) paid \$7000 to the grievant in this matter, which, as shown below, represented nearly the entire fee that he had paid for respondent's legal services that she never provided. In January 2013, the CPF paid to John Moloney, the client in Delgado-Shafer II, \$7,459.66, which represented a fee arbitration award that respondent never paid.

Service of process was proper. On April 17, 2013, the OAE sent a copy of the formal ethics complaint to respondent, by regular and certified mail, return receipt requested, to her brother's address, which she identified, in a 2013 R. 1:20-20 affidavit, as the address where her mail should be directed. A copy of the complaint also was sent by regular and certified mail, return receipt requested, to an address that is to remain

confidential, pursuant to the terms of a protective order entered by us on October 26, 2011.

The receipt for the certified letter sent to respondent's brother's address was signed by respondent on April 27, 2013. The letter sent by regular mail was not returned. Both the certified and regular mail sent to the confidential address were returned to the OAE marked, "attempted not known."

On May 15, 2013, the OAE sent a letter to respondent at her brother's address, by regular mail. The letter directed respondent to file an answer within five days and informed her that, if she failed to do so, the OAE would certify the record directly to us for the imposition of sanction. The letter was not returned to the OAE.

As of July 9, 2013, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

The first count of the complaint charged respondent with having violated RPC 8.1(b). Specifically, in March 2012, Eusebio Cuevas filed a grievance against respondent, alleging that he had paid her \$7220 to file immigration applications for certain members of his family, that she had failed to do so, and

that she had failed to return his telephone calls or otherwise communicate with him.

On April 25, 2012, the OAE sent a copy of the grievance to respondent at the confidential address, by regular and certified mail, return receipt requested. The letter directed respondent to file a written reply to the grievance within ten days. The certified letter was not claimed. The letter sent by regular mail was not returned to the OAE.

On February 5, 2013, the OAE sent a copy of the grievance to respondent at her brother's address, by regular and certified mail, return receipt requested. The letter directed respondent to file a written reply to the grievance within ten days. Although the certified letter was marked "refused" and was returned to the OAE, the letter sent by regular mail was not returned to the OAE.

Also, on February 5, 2013, the OAE sent a separate letter to respondent at her brother's address, by regular and certified mail, return receipt requested. The letter directed respondent to appear at the OAE for an interview, on February 28, 2013, at 2:00 p.m. Although the complaint did not reveal whether the letter was delivered, it is clear that respondent received it. On February 27, 2013, a "life skill specialist" with a community

services agency in New Jersey, faxed a letter to the OAE, stating that respondent could not appear for the interview, because, on that day, she was required to attend a pre-hearing for funding assistance before the Board of Social Services.

The next day, OAE investigator M. Scott Fitz-Patrick contacted the life skills specialist and learned that the Board of Social Services pre-hearing was scheduled for 11:30 a.m. Even though the OAE interview was not until 2:00 p.m., the life skills specialist stated that she could not accompany respondent to the OAE interview because she had another meeting at that time. Further, she informed Fitz-Patrick that "she is a social services counselor and not a lawyer."¹ Respondent did not appear for the OAE interview.

On March 13, 2013, the OAE informed respondent, in a letter, that her failure to appear for the interview had been deemed a failure to cooperate with disciplinary authorities.

¹ The allegations of the complaint pertaining to this conversation differ from a letter confirming the conversation, which is Exhibit 12 to the pleading. For example, according to the letter, it was the OAE that had informed respondent that the life skills specialist was "not [your] legal representative, and we cannot consider her as such."

The letter further informed respondent that, although the OAE would not reschedule the demand interview, she could contact the OAE with proposed dates on which she could appear and discuss the grievance. Respondent did not contact the OAE.

The second count of the complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c), and also with having abandoned her law practice.

Specifically, on February 13, 2007, Cuevas retained respondent to file immigration applications for six members of his family: his wife, his three sons who resided with him, and his parents, who lived in Mexico. During the next nine months, Cuevas made eight cash payments, totaling \$7220,² for respondent's legal fees and costs for filing the immigration applications.

Respondent failed to file any immigration applications and failed to communicate with Cuevas about the status of the matters. After Cuevas made his last legal fee payment, on

² Although the second count of the complaint stated that the cash payments totaled \$7920, a computation of the actual amounts of the receipts, copies of which were attached to the complaint, shows that Cuevas gave respondent \$7220, as alleged in the first count of the complaint.

November 21, 2007, respondent did not return his numerous telephone calls. Moreover, Cuevas went to respondent's law office on numerous occasions, at different times of the day, but she was never there.

Respondent never advised Cuevas that, as of January 2, 2009, she was suspended from the practice of law. Although Cuevas hired other attorneys to file the immigration applications for his three sons, he could not afford to file immigration applications for his wife and his parents.

As stated above, in December 2012, the CPF paid \$7000 to Cuevas.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

The allegations of the first count of the complaint support a finding that respondent failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b). She neither submitted a written reply to Cuevas's grievance nor appeared for the OAE interview. Thereafter, she ignored the OAE's request for dates

on which she would be available to discuss the Cuevas grievance with the OAE.

As to the second count of the complaint, the allegations allow a finding that respondent exhibited gross neglect and a lack of diligence by failing to provide any services to Cuevas, after having collected a fee from him. In addition, she failed to communicate with him, both by failing to return his telephone calls and by failing to inform him of the status of the immigration matters.

We find that the client-abandonment charge cannot stand, however. The abandonment of clients is a violation of RPC 1.16(d). In re Kantor, 180 N.J. 226, 230-31 nn.4-5 (2004). In this matter, the complaint did not charge respondent with having violated RPC 1.16(d), as required by R. 1:20-4(b). Even if it had, however, the facts alleged do not support a finding of client abandonment.

Client abandonment occurs when an attorney has "disappeared" and cannot be found. See, e.g., Kantor, supra, 180 N.J. 226 (attorney failed to communicate with ten clients for whom he had active files and abandoned his practice, without completing the matters for which he had been retained); In re Holman, 156 N.J. 371 (1998) (attorney collected a fee from

fifteen clients, without any intention of providing any services to them, and disappeared); In re Golden, 156 N.J. 365 (1998) (attorney failed to reply to seven clients' attempts to communicate with him and then disappeared); and In re Clark, 134 N.J. 522 (1993) (attorney abandoned seven clients when, without notice to them, he closed his office and disconnected his telephone). The fact that respondent was not present at the office when Cuevas went there is not an indication that she had abandoned her practice. For example, she could have been in court, on vacation, or tending to any number of matters that would take her out of the building. In addition, her telephone seemingly remained connected, as Cuevas was able to call and leave messages for her. In the absence of evidence that the office was shut down — indeed, abandoned — we cannot find, based on the allegations of the complaint, that respondent abandoned Cuevas. More properly, she neglected his matters and then violated R. 1:20-20 by not notifying him of her 2009 suspension.

The complaint also charged that respondent violated RPC 8.4(c) by her "dishonest retention" of Cuevas's \$7220. We find that the allegations do not support that charge. At the time that she was retained, respondent may have fully intended to provide legal services to Cuevas, but later failed to do so for

unknown reasons. This shortcoming would constitute a violation of RPC 1.16(d) (failure to refund an unearned retainer), a charge not contained in the complaint, again, as required by R. 1:20-4(b). In situations where the attorney has not returned an unearned fee, we and the Court have required that the attorney do so. Here, however, the CPF made the client whole by paying him \$7000. Thus, respondent now has an obligation to reimburse the CPF.

To conclude, we determine that the allegations of the complaint support a finding that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.1(b).

There remains for determination the appropriate quantum of discipline to impose on respondent for her ethics infractions.

As indicated above, respondent's disciplinary history consists of a one-year suspension, a two-year suspension, and a three-year suspension. Moreover, in each of those matters, respondent's character has been proven to be questionable, if not wholly deficient. In Delgado-Shafer I, we described her "overall conduct [as] so unprofessional and so close-to-the-edge of the bounds of outright theft" and noted that she "is reckless both in terms of how she practices law and how she runs her practice," that she "knows no boundaries when it comes to business with

friends and family," and that she has a "penchant for deceit and dishonesty." Delgado-Shafer I, DRB 08-094 (September 9, 2008) (slip op. at 60-61).

In Delgado-Shafer II, respondent's misconduct included "a shake down" of her own client, on Christmas Eve, for the payment of an invoice that she had issued just that day, representing charges for work that she had done only days before. Delgado-Shafer II, DRB 11-087 (September 14, 2011) (slip op. at 14-15). As part of the shake down, the client was told that, if he did not pay the bill, the court would reject a pending motion for reconsideration. Id. at 17.

In Delgado-Shafer III, we described respondent's tactics in repeatedly filing deficient bankruptcy petitions in an attempt to stay a civil action instituted against her by her former clients as "a perverse form of legal bullying designed to defeat her former clients' right to seek recompense for the ill effects of her misdeeds." Delgado-Shafer III, DRB 11-314 and 11-315 (February 28, 2012) (slip op. at 46). Later, we described her behavior as "self-serving, dishonest, and underhanded," and noted that she had demonstrated a "stunning disrespect for the Judiciary and the disciplinary system." Id. at 53. We also noted that she has "a penchant for evading and playing fast and

loose with the truth, a characteristic that she continues to display even now." Id. at 49.

Certainly, the case now before us is a further example of respondent's inability or unwillingness to comply with the duties imposed on all New Jersey attorneys with respect to clients, courts, and the disciplinary system. Despite our inclination to recommend her disbarment, we are constrained from doing so both by precedent and by the procedural timeline of respondent's cases.

The conduct in connection with the Cuevas matter took place from February through November 2007, or within the same time frame as the conduct in the Delgado-Shafer II matter. If this matter had been a part of Delgado-Shafer II, it would not have resulted in a sanction greater than the one imposed in that case, a one-year suspension. Therefore, we determine not to impose additional discipline for respondent's derelictions in the Cuevas matter. See, e.g., In re Tunney, 196 N.J. 536 (2005) (imposing no additional discipline for attorney's lack of diligence and failure to communicate in two client matters, plus gross neglect in one of those matters because, if the two client matters had been heard in the previous disciplinary matter, the

discipline in the previous matter would not have been affected by the additional misconduct).

There is left for consideration, however, the appropriate measure of discipline for respondent's failure to cooperate with the OAE in this default matter. Ordinarily, an admonition is imposed for a single violation of RPC 8.1(b), if the attorney does not have an ethics history. See, e.g., In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until finally retaining ethics counsel to assist her); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the DEC's investigation of the grievance and did not communicate with the client), In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with DEC investigator's request for information about the grievance; attorney also violated RPC 1.1(a) and RPC 1.4(b)); In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011) (after his former wife filed a grievance against him, attorney ignored numerous letters from the district ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to

obtain information from other sources, including the probation department, the lawyer who represented the former wife at that time, and the attorney's mortgage company); In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); and In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance).

If the attorney has an ethics history, or has established a pattern of not cooperating with disciplinary authorities, the discipline may be enhanced to a reprimand. See, e.g., In re LeBlanc, Jr., 192 N.J. 107 (2007) (attorney was previously disciplined (censure) for several improprieties, including failure to cooperate with disciplinary authorities).

In this case, respondent has a disciplinary history that includes the failure to cooperate with disciplinary authorities, which, even in the face of the default in this matter, would ordinarily justify no more than a reprimand. In our view, however, the extraordinary nature of respondent's history, particularly her failure to learn from prior mistakes and her disturbing pattern of not cooperating with disciplinary

authorities on any level, is so troubling that we simply cannot impose less than a suspension in this case.

We begin with respondent's failure to learn from past mistakes. In Delgado-Shafer II, which we decided on September 14, 2011, respondent's misconduct included her failure to reply to the client's grievance in early 2010. Here, Cuevas's grievance was sent to respondent in April 2012 and, again, in February 2013 – well after our decision in Delgado-Shafer II and the Court's November 2011 order affirming our imposition of a one-year suspension in that matter. Yet, in the face of having been disciplined for failing to reply to a grievance, she chose the same course of conduct in this matter.

Next, we consider respondent's ongoing and staggering refusal to cooperate with disciplinary authorities on nearly every level and the attitude of entitlement that her recalcitrance demonstrates. In Delgado-Shafer II, she failed to comply with a fee arbitration award and failed to reply to the grievance. Moreover, in addition to her failure to reply to the grievances of two clients in Delgado-Shafer III, respondent failed to participate in the pre-hearing stage of that matter and failed to appear at the ethics hearing of June 2011, which, according to the special master, demonstrated a "cavalier

attitude towards th[at] proceeding and the ethical rules governing the profession." Delgado-Shafer III, supra, slip op. at 22.

Admittedly, we accepted, in Delgado-Shafer III, that respondent had suffered from "some form of mental illness since July 2010," notwithstanding the absence of any medical report submitted by her to prove that fact. Id. at 52. This "mental illness," however, cannot now serve to excuse her failure to reply to the grievance or provide an answer to the complaint in this matter, as there is nothing in the record to substantiate whether she remained ill and, if so, whether she was receiving treatment for it.

In the matter now before us, respondent has demonstrated quite clearly that, if her demands are not met by the disciplinary authorities, she will simply refuse to play ball. Consider her eleventh-hour attempt to avoid the OAE interview based on an alleged conflict between the interview and a pre-hearing that she had before the Board of Social Services. Respondent had no trouble communicating her request for an accommodation to the OAE, albeit through an intermediary. Yet, after the OAE had determined that there was no conflict between respondent's pre-hearing with the Board of Social Services, at

11:30 a.m., and the interview with the OAE at 2:00 p.m., and, consequently, advised respondent's intermediary of her obligation to appear, respondent did not attend the interview, without explanation and without apology.

Given respondent's clear pattern of what must be regarded as an unwillingness - indeed, refusal - to conform her conduct to the requirements imposed upon all attorneys by the disciplinary system, we are duty-bound to impose a one-year, consecutive suspension on her to reflect the high degree of recalcitrance on her part. She has forfeited a lesser form of discipline.

Members Doremus and Yamner voted to disbar respondent. Member Gallipoli did not participate. Members Hoberman and Singer abstained.

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: 
Isabel Frank
Acting Chief Counsel


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

In the Matter of Dorca Delgado-Shafer
Docket No. DRB 13-241

Decided: December 17, 2013

Disposition: One-year consecutive suspension

Members	Disbar	One-year suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Singer					X	
Yamner	X					
Doremus	X					
Gallipoli						X
Hoberman					X	
Zmirich		X				
Total:	2	4			2	1


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