SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-440

IN THE MATTER OF

DEIRDRE A. PRZYGODA

AN ATTORNEY AT LAW

Decision

Argued: February 11, 1999

Decided: June 9, 1999

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District IIIB Ethics Committee ("DEC"). The complaint charged respondent with violations of the Rules of Professional Conduct in seven matters. For the sake of clarity, the specific allegations will be set forth within each recitation of facts. Respondent essentially admitted the factual allegations of the complaint.

The Board originally considered this matter at its June 1997 meeting as a recommendation for an admonition, under Docket No. DRB 97-021. The Board remanded

the case to the Office of Attorney Ethics for a new investigation and the filing of a new complaint. The matter was to be heard by a different DEC. The language of the remand letter illustrates the Board's concerns about the initial proceeding:

> Specifically, the two-count complaint drafted by the District VIII Ethics Committee charged respondent with ethics violations in seven matters. At the DEC hearing, it was concluded that there were no genuine issues of fact in the first matter, Scaramuzzino, based on the answer filed by respondent. The committee, therefore, ruled that testimony was not necessary in that matter. As to the remaining five matters, because respondent denied some of the allegations charged in the complaint, the presenter withdrew those matters. Asked at the Board hearing why he had taken this action despite certain admissions of wrongdoing by respondent, the presenter replied that he had prosecuted only what the committee had directed him to prosecute. In other words, the hearing panel instructed the presenter to proceed only with the second count (the Ostek matter), notwithstanding the presenter's belief that there was probable cause to prosecute the withdrawn matters.
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> In light of this inexplicable action by the committee and in light of respondent's admissions in her answer as to some of the counts that were withdrawn, the Board determined to send all matters to a new committee for a new investigation and the filing of a new complaint. The Board found that there was an inadequate exploration of the allegations in the complaint and that it was warranted to remand all matters, rather than dispense discipline in a piecemeal fashion.
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> In addition, the Board directed the OAE to determine, within sixty days of the date of this letter, whether charges for failure to supervise, as well as any other charges that might be warranted, should be brought against respondent's supervisor, [ ] Esq. Should a complaint issue against [that attorney], respondent's and [the attorney's] matter should be heard together. Both cases are to be prosecuted by the OAE. . . .

Respondent was admitted to the New Jersey and New York bars in 1990. During the relevant period of time, she was employed at the law offices of Richard D. Simon ("the Simon firm"), in East Brunswick, Middlesex County. Respondent's employment at that firm

was terminated on or about November 20, 1995, after the filing of the original ethics complaint in these matters. At the time of the DEC hearing, respondent maintained a small practice from an office in her house. She has no history of discipline.

There was no testimony offered by the grievants in these matters, with the exception of Kathleen Ostek (count seven). Ostek testified during the earlier proceeding before the District VIII Ethics Committee. The transcript of her testimony is in evidence as exhibit C-F.

The Scaramuzzino Matter (Count One)

On March 16, 1994, the New York law firm of Cooper and Bamundo, P.C. ("the Cooper firm") transmitted to the Simon firm the file in the matter of Arturo and Vincent Scaramuzzino v. Alex and Tessie Vosinakis, a civil action. The Simon firm had assumed the representation of that matter. The Cooper firm had already filed a complaint in the matter, but the complaint had been dismissed for failure to prosecute. On April 21, 1994, respondent met with the Scaramuzzinos and signed a retainer agreement to pursue the litigation. At some point after being retained, respondent misrepresented to the Scaramuzzinos that she had filed a new complaint, served the defendants and obtained a default judgment in the amount of $150,000. In fact, respondent had not even filed the complaint, an event of which Simon was unaware.

On December 1, 1995, after respondent's employment was terminated, the Simon firm filed a complaint in the Scaramuzzino case.

The ethics complaint charged respondent with a violation of RPC 1.1(a) (gross neglect) and RPC 8.4(c) (conduct involving fraud, dishonesty, deceit or misrepresentation).

The DEC determined that respondent had violated RPC 1.1(a), by failing to take action in the Scaramuzzinos' behalf between March 1994[1] and December 1, 1995, and RPC 8.4(c), by misrepresenting the status of the matter to the Scaramuzzinos.

The Mirelli Matter (Count Two)

In or about July 1994, Jerry Mirelli retained the Simon firm to investigate the viability of his claim against his former employer, Care International, Inc. (Care), about a disputed severance package. The matter was assigned to respondent. From July 1994 through November 1994 respondent negotiated with Care in Mirelli's behalf. The negotiations were unsuccessful. In the fall of 1995, respondent prepared a complaint, which she reviewed with Mirelli. She told Mirelli that she would file the complaint. Thereafter, respondent had one or two communications with Mirelli, in which she misrepresented to him that the matter was proceeding apace. In fact, respondent had not filed the complaint in Mirelli's behalf. Simon had no knowledge of respondent's failure to file suit.

The ethics complaint charged respondent with a violation of RPC 1.1(a) and RPC 8.4(c).

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[1]According to the complaint, respondent did not meet with the Scaramuzzinos until April 1994.

The DEC determined that respondent had violated RPC 8.4(c) for misrepresenting to Mirelli that the complaint had been filed. The DEC did not find a violation of RPC 1.1(a), reasoning that the period that elapsed between the preparation of the complaint and the termination of respondent's employment — one to two months — was not that unreasonable.

The Pryce Matter (Count Three)

On July 19, 1993, the Simon firm was retained by Patrecia Pryce in connection with a personal injury matter. The file was assigned to respondent. On November 15, 1994, respondent filed a complaint in Pryce's behalf. At some point thereafter, respondent became aware of an error in the complaint, specifically, the defendant had been misnamed or a codefendant omitted. Respondent did not timely serve the complaint on the defendants and did not timely file an amended complaint. Respondent did not inform Pryce or the Simon firm of this fact. Thereafter, by order dated September 22, 1995, the court dismissed the Pryce complaint for lack of prosecution.

On December 22, 1995, the Simon firm served the defendants with an amended complaint. On March 1, 1996, the court granted the Simon firm's motion to vacate the September 22, 1995 order of dismissal.

The ethics complaint charged respondent with a violation of RPC 1.1(a) and RPC 1.4(a).

The DEC determined that, from November 15, 1994 until respondent's departure from

the Simon firm in November 1995, she failed to take appropriate action in her client's behalf and failed to communicate with her client, in violation of RPC 1.1(a) and RPC 1.4(a).

The Posso Matter (Count Four)

On April 2, 1994, Cecelia Posso retained the Simon firm to represent her in the expungement of her criminal record. Posso paid the Simon firm $635 for fees and costs. Respondent prepared a complaint for expungement with supporting documentation and advised Posso that she would file the papers. As of the date of respondent's termination from the Simon firm, the Posso complaint had not been filed. Respondent did not disclose to Posso or to the firm that the complaint had not been filed.

On November 28, 1995, the Simon firm refunded Posso's $635 and withdrew from the representation.

The ethics complaint charged respondent with a violation of RPC 1.1(a).

The DEC determined that respondent had been guilty of gross negligence, in violation of RPC 1.1(a).

The Rampacek Matter (Count Five)

In or about April 1991, the Simon firm was retained to represent John Rampacek in his capacity as executor of the estate of Mary Rampacek. The matter was assigned to respondent. In or about March 1992, the estate was settled by way of an informal

accounting. On December 20, 1994, one of the heirs filed a complaint and order to show cause seeking to reopen the estate and asking for a formal accounting. The application stemmed from the heir's discovery of an amount of cash, unknown to the Simon firm, found in the decedent's house and omitted from the informal accounting. On January 17, 1995, the Simon firm was again retained to represent Rampacek in the formal accounting litigation. This matter, too, was assigned to respondent.

On February 24, 1995, a consent order directed Rampacek to file a formal accounting on or before March 10, 1995. Respondent failed to furnish a formal accounting by that date. On or about April 19, 1995, the heir, having not received a formal accounting, filed a motion to enforce the February 24, 1995 order for an accounting and to compel Rampacek to pay the expenses for the motion. Respondent did not oppose that motion. Thereafter, on May 12, 1995, the court ordered Rampacek to file an accounting by the fifth day after his receipt of the order and to pay $315 in counsel fees and costs. Respondent did not advise Rampacek or the Simon firm of the May 12, 1995 order or of the $315 assessment. In addition, respondent failed to supply the formal accounting required by the order.

On or about June 7, 1995, the heir filed a motion to enforce litigant's rights. On or about July 17, 1995, the court ordered Rampacek to appear before the court on August 11, 1995 to show cause why he should not be held in contempt for failure to comply with the court's orders. Respondent did not apprise Rampacek or the Simon firm of the court's order. Rather, based on communications with her adversary's office, respondent proceeded to file

the formal accounting, in lieu of replying to the order to show cause and the June 7, 1995 motion, believing that that action would resolve the matter. On or about August 9, 1995, the heir's counsel received the formal accounting from respondent. Counsel, however, did not think that the accounting was in accord with the court rules and did not withdraw the motion, contrary to what respondent had been reasonably led to believe, based on her prior conversations with counsel. Thus, on August 11, 1995, respondent did not appear when the court considered the heir's motion. Thereafter, on August 22, 1995, the court ordered (1) the submission of a formal accounting complying with the court rules on or before September 11, 1995; (2) a fine of $100 per day against Rampacek for each day after September 11, 1995 that the accounting was not furnished; (3) the filing of an ex parte application for contempt against Rampacek, should the accounting not be received by October 11, 1995 and (4) fees and costs in the amount of $1,185 incurred in connection with the various motions. Once again, respondent failed to advise Rampacek of the court's August 22, 1995 order. Her explanation was that there was no need to apprise Rampacek of that unfavorable development because she believed that she could resolve the matter. Respondent now recognizes that her conduct was wrong. Apparently, respondent had some discussion about the case with Simon, who told her to advise the court of her misunderstanding with her adversary. Respondent stated that she did not discuss with Simon "each and every detail of the order."

On October 31, 1995, the heir filed an order to show cause, returnable on December

21, 1995, to hold Rampacek in contempt and to obtain a final judgment for fees and fines previously ordered by the court. As of November 20, 1995, the date of respondent's termination from the Simon firm, respondent had not notified Rampacek of the heir's October 31, 1995 motion and had failed to supply a compliant formal accounting, as directed by the court order of August 22, 1995. Respondent testified that, after she was discharged from the firm, she filed an additional pleading in an attempt to rectify her inaction.[2]

On December 22, 1995, the Simon firm paid the heir $1,185, pursuant to the court's August 22, 1995 order, including the above-mentioned $315 assessment.

The complaint charged respondent with a violation of RPC 1.1(a)(gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate).

The DEC determined that "[t]here was a significant period of delay between February 24, 1995 and November 20, 1995. There was significant delay between August 22, 1995 and the date of her departure from the firm, which constitutes gross negligence under RPC 1.1(a)." The DEC also found a violation of RPC 1.4(a). The DEC did not find, however, a violation of RPC 1.3, deeming it to be part and parcel of respondent's gross negligence.

The Genovese Matter (Count Six)

In or about August 1995, Denise Genovese consulted with respondent to ascertain the

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[2]It should be noted that nearly three months passed between the order and the termination of respondent's employment.

validity of a potential claim against K-Mart. Genovese had been detained, but not arrested, in a K-Mart store. Prior to this time, respondent had represented Genovese in several legal matters. Initially, respondent advised Genovese that she did not think that Genovese had a viable claim against K-Mart and that the firm was not interested in pursuing the matter. Several weeks later, however, when Genovese came to the firm to have a will prepared and after respondent had discussed the claim with Simon, respondent advised Genovese that the firm would pursue the claim against K-Mart after all. The parties did not sign a retainer agreement. Respondent assured Genovese that she would take care of the matter.

Thereafter, respondent made the following misrepresentations to Genovese: (1) that she had obtained Genovese's medical records; (2) that she had spoken extensively with K-Mart representatives; (3) that no settlement offer had been made; (4) that additional action would be taken and (5) that she would be filing a complaint in Genovese's behalf. In fact, respondent had not obtained the medical records, had discussed the case with K-Mart representatives only once or twice and had not actively engaged in settlement negotiations. At the time that she left the Simon firm, respondent did not apprise Genovese or the firm of the true status of the K-Mart matter.

The complaint charged respondent with a violation of RPC 8.4(c).

The DEC determined that respondent had been guilty of misrepresentations, in violation of RPC 8.4(c).

The Ostek Matter (Count Seven)

On May 10, 1993 the Simon firm was retained to represent Kathleen M. Ostek in connection with a bankruptcy petition. The matter was assigned to respondent. Respondent and Simon advised Ostek that any state and federal taxes owed might be dischargeable in bankruptcy. Respondent filed a chapter seven petition on June 18, 1993 and subsequently attended a section 341 hearing. On October 6, 1993, the bankruptcy court released Ostek from all dischargeable debts. Thereafter, between July 1993 and October 1995, Ostek continued to receive communications from the IRS and the state about taxes owed. Throughout this period, respondent advised Ostek not to worry, assuring her that she would take care of the problem. Apparently, respondent was successful in resolving the matter with the state.

Ostek filed tax returns for 1993 and 1994, but did not receive an expected tax refund. Upon inquiry to the IRS, Ostek was advised that the refund amounts had been applied to her 1989 tax arrearage. Respondent promised Ostek that she would look into the matter and attempt to get Ostek's money refunded.

In November 1994 and July 1995, Ostek received two checks drawn against respondent's personal account. Respondent issued the checks to falsely portray to Ostek that they represented the 1993 and 1994 tax refunds from the IRS. Respondent knew that no checks had been issued from the IRS for the refunds. Respondent testified that, at the time

she issued the checks, she thought that the debts would be discharged and that Ostek's money would be refunded. It was not until October 1995 that respondent learned that the IRS had concluded that the 1989 taxes were not dischargeable. Respondent so advised her at that time.

On October 31, 1995, Ostek learned that the IRS had levied on her bank account for tax arrearage from 1989 because no competent action had been taken in her behalf. Respondent explained in her answer that, during the course of her representation of Ostek, she had become aware of several attempts to levy on Ostek's bank accounts and that respondent had been successful in frustrating the IRS' efforts. Respondent claimed that she had no information about the October 31, 1995 levy, but admitted that no action had been taken with respect to any levy after October 25, 1995.

As noted above, this is the only matter where the grievant testified. Her testimony corroborated the allegations of the complaint — which respondent admitted — that, although respondent took some steps in the case, her actions were not sufficient and that Ostek believed that respondent was resolving the tax issues for her. Indeed, in her answer respondent admitted that, although she advised Ostek that she had been in contact with the IRS about the tax problems, her contact had, in fact, been "limited."

The complaint charged respondent with a violation of RPC 1.1(a) and RPC 8.4(c).[3]

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[3]There was some confusion during the second hearing about the basis for the charge of gross neglect. The presenter explained it to the panel as follows:

... respondent told Ms. Ostek not to worry about the IRS communications that Ostek

The DEC found that respondent was not guilty of gross negligence or fraud. The DEC determined, however, that respondent was guilty of misrepresentation, in violation of RPC 8.4(c), in that she misrepresented to Ostek that the refunds had come from the IRS.

* * *

In her answer to the complaint, respondent asked the DEC to consider the following mitigating factors:

> 1. Since respondents [sic] termination from the Law Offices of Richard D. Simon, two and one half [sic] years ago she has practiced with no incident.
>
> 2. During the first year Respondent practiced only a minimal amount, mostly for family and friends. In fact Respondents [sic] practice is still limited to family, friends and referrals. Respondent has not advertised or actively sought clients while this matter is pending.
>
> 3. The actions taken in each allegation of misconduct served only to hurt respondent, professionally and economically. Respondent received no benefit from any action taken. Respondent merely attempted to spare the client unnecessary concern until such time as it was essential for them to know the complete facts involved in their case.
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> 3.[sic] Respondent had been practicing law for only a short period of time, five years at the time of termination from Richard Simon's office. Respondents [sic] experience with clients and observation of attorney candor were limited.
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> 4. Subsequent to termination, Respondent repaid Richard Simon for the money he refunded to Cecelia Posso and the money he expended in the

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had been receiving because respondent would take care of the tax arrears problem. It's that representation and the failure to actually take care of the tax arrears problem, the failure to actually get the refund back from the IRS on Ms. Ostek's behalf but instead issuing the checks from herself that amounts to gross negligence on that underlying matter.

[T31]

Rampacek matter.

5. Respondent practiced law for five years without incident prior to this limited period of time.

6. Respondent has been extremely honest and cooperative in this proceeding and is willing to continue cooperation, should it be necessary.

7. Respondent has experienced economic loss, not gain, in paying Ms. Ostek money, and Richard Simon money.

8. Respondent sincerely regrets the actions which have led to this proceeding, and has learned a valuable lessen [sic] regarding attorney client relations as a result of this proceeding. The events of my past shall not be repeated.

9. Respondents [sic] actions, although not the proper way to handle a situation were not taken in an intentional effort to hurt the client or the firm. Respondent made the wrong decisions in an attempt to assist the client and spare them the negative aspects of their matters, hoping to resolve the matters in a positive way.

10. After her termination, respondent filed an answer to the pending Rampacek motion so as to avoid any additional problems in that matter.

11. Respondent did not bill the clients for work which was not completed.

12. In each of [sic] count of the complaint, the client was not hurt by the result of the Respondents [sic] actions.

13. Respondent has already faced a disciplinary review board regarding the same allegations contained herein. Said board found that there was some misconduct and recommended that Respondent be reprimanded for her actions.

14. At the prior disciplinary proceeding, Richard D. Simon, Esq., the complainant in counts one through six, agreed that a reprimand was the appropriate discipline.

15. The allegations contained in Count Seven of the complaint were not only addressed at the prior hearing, but were twice dismissed without a hearing. It was not until being served with the complaint in August 1996 that respondent became aware that these allegations were resurrected.

* * *

The OAE recommended a retroactive three-month suspension, taking into account the procedural history of this matter and the fact that respondent has remained in practice without any additional complaints.[4] In support of its recommendation, the OAE cited In re Mark, 132 N.J. 268 (1993), where a three-month suspension was imposed on an attorney who made oral and written misrepresentations to the court and his adversary in a litigated matter. In that case, however, the attorney's actions were not made with the intent to deceive the court. In addition, numerous mitigating factors were present. Specifically, as set forth in the Board's decision:

> (1) [the attorney] readily admitted his wrongdoing; (2) he made no attempt to cover up his conduct; to the contrary, he took quick action to confess his improprieties to his supervisor and to the assignment judge; (3) he professed deep remorse and contrition for his actions; (4) he was experiencing serious marital difficulties, (5) he was saddled with too many professional responsibilities, with almost no supervision from his superiors; (6) he was young and relatively inexperienced as an attorney; (7) it appears that his client suffered no harm; (8) his conduct was motivated by an impulse, as found by his psychiatrist, and not by lack of good character; (9) several witnesses attested to his good reputation and integrity, and (10) his conduct was an aberration, unlikely to be repeated.

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[4]The OAE suggested that the suspension be retroactive to June 27, 1997, the date of the Board's letter remanding the matter to the OAE.

Here, the DEC agreed with the OAE's recommendation for a three-month suspension, but recommended that it be prospective, in light of the pattern of behavior and length of time over which the offenses occurred. In addition, the DEC suggested that respondent attend the seminar offered by the Institute for Continuing Legal Education called "Handling Life as a Lawyer." The DEC considered a number of mitigating factors, many of which were also present in the Mark case. Specifically, the DEC noted that respondent was relatively young, that she "received improper and very severely deficient guidance and mentorship," that "she was in over her head on many cases" and that she did not have sufficient office resources to assist her. The DEC also considered to a lesser extent that respondent suffers from Crohn's disease, which according to respondent, is exacerbated by stress. In addition, the DEC took into account that respondent's misrepresentations were not for her own monetary gain and that she was cooperative and candid with the disciplinary system. Finally, the DEC pointed out that respondent has voluntarily restricted her practice to areas where it is unlikely that the same problems will arise.

* * *

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

In her answer, respondent set forth "affirmative defenses" in the Mirelli, Pryce, Posso and Rampacek matters. Her defenses, however, while serving to explain some of her

behavior, do not excuse her misconduct. For example, in Mirelli, respondent stated that she did not believe that there was a substantial claim involved and advised Simon of her "lack of confidence" in the matter. Respondent recalled that Simon shared her opinion. The fact remains, however, that the representation continued and the matter should have been diligently pursued, regardless of respondent's prediction of an unfavorable result. Respondent also stated that, at about the time her employment was terminated, she attempted to contact Mirelli to advise him of the status of his case and that she was no longer representing him. Respondent did not explain her efforts in detail or why they were not productive.

In the Pryce matter, respondent stated that she filed a certification in opposition to the court's motion to dismiss for failure to prosecute. She did not elaborate on why the matter was dismissed, despite her efforts. Respondent went on to explain what Pryce was told about the posture of her case:

> The client did question the status of her case on various occasions. She was originally told that the complaint was filed and we were awaiting service and an answer from the defendant. This being completely true. Once the Court brought on its motion, the client was advised, upon inquiry, that the court was concerned that this matter was taking too long and therefore the court brought on it's [sic] own motion to move things along. I did not tell the client what the nature of the courts [sic] motion was, but rather advised her that once the court made it's [sic] decision the case would begin to move more quickly, the complaint would be served, an answer would be received and depositions scheduled.
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> Mr. Simon questioned me periodically regarding this matter and he was told that an amended complaint was required. The notice of the courts [sic] motion was opened by someone other then [sic] respondent and placed on the

> office calendar. It was not a hidden fact, nor was there any intent on behalf of the respondent to hide the fact from others in the office, or to intentionally misrepresent the facts to the client. Respondents [sic] actions were not an intentional untruth and were not intended to mislead the client. Respondent did not advise client of the complete facts in a [sic] attempt to avoid any unnecessary concern on behalf of the client. In the past respondent had witnessed both first hand and in the office other cases where the court continued the matter and allowed additional time to serve the defendants. Respondent believed this would be the case in this action as well and that the statement made to the client would in fact be true. An answer would be received and depositions scheduled.
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> [Answer, exhibit J-2]

Similarly, in Posso, respondent explained that there had been some difficulty in preparing the expungement application because of a missing document. Granted, that could explain some delay in the matter. Respondent went on to state, however, that she had advised Posso that the documents would be filed and, in fact, that she "had the clients [sic] documents in her brief case at the time of her termination, having every intent of filing same in Union County." At that time, respondent should have ensured that someone else at the Simon firm be made aware that the papers were completed and ready to be filed. This she failed to do.

Finally, in the Rampacek matter, respondent first explained the difficulty in preparing the accounting because of the passage of time and the unavailability of necessary documents. She also set out in further detail her confusion about the June motion and July order to show cause, stemming from her communication with her adversary. While these factors explain some of respondent's misconduct, her apparent lack of comprehension of her responsibility

to communicate with her client is troubling. Indeed, respondent stated that

> [t]he contempt order along with the Motion returnable on December 21, 1996 [sic] was no secret to the firm. Although respondent did not discuss the matter at length with Richard Simon, or any other member of the firm, Mr. Simon was aware of the motion which was believed adjourned, and the fact that it was in fact not. Upon information and belief, Richard Simon opened the mail and saw the motion for December 21, 1996 [sic]. Mr. Simon advised respondent to respond to the motion and the date was marked in the calendar.
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> Respondent did not intentionally hide this matter from the office or fail to notify the office of it's [sic] existence. In fact, respondent was told of the motion by Mr. Simon. Respondent did not notify the client of these proceedings, other then [sic] to tell him that the heir was persisting in her claim and the matter was in the courts. Respondent only contacted the client for purposes of ascertaining information and requesting documents.

As to respondent's duty to communicate with her clients, the following exchange took place during the hearing between respondent and the panel chair:

> [MR. HULSE]: . . . the allegations of misconduct under the rules of professional conduct, the gross negligence, the failure to discuss with clients, were you aware at the time that those events were occurring that your conduct was, if not specifically related to some particular Rule of Professional Conduct, but that your conduct was not appropriate for an attorney in relation to his client based upon what you were supposed to be doing for him? Does that make sense to you?
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> [RESPONDENT]: You want to know if I knew what I was doing was wrong?
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> [MR. HULSE]: Even if you didn't know specifically, you had a sense it was wrong, that's my question, yes.
>
> [RESPONDENT]: I would probably say yes because my actions were more omissions of what I didn't tell the clients. I would tell them part of what happened and not all of what happened, and I would usually feel guilty after doing it.
>
> [MR. HULSE]: So you specifically did not tell them everything?

[RESPONDENT]: Right.

[MR. HULSE]: Purposefully?

[RESPONDENT]: Yes.

[MR. HULSE]: And why was that?

[RESPONDENT]: Well, in most of the cases I expected to be able to resolve the matter without having to tell them the negative parts of the situation and then spare them the knowledge of the - what was happening that was adversely affecting them in an expectation that that would be resolved.

[MR. HULSE]: And also spare yourself the criticism for not doing something right?

[RESPONDENT]: Possibly.

[MR. HULSE]: I mean, you were protecting yourself as well as your clients, weren't you?

[RESPONDENT]: I suppose. I mean, I was more doing it to protect them because I really thought that what I was doing could be rectified and that it would be worked out.

[T60-62]

By avoiding giving bad news to some of her clients, respondent made numerous misrepresentations by silence. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

With regard to the specific findings in the individual counts of the complaint, the DEC found respondent guilty of each of the charged violations in Scaramuzzino, Pryce, Posso and Genovese. In Mirelli, the DEC did not find respondent guilty of gross neglect, reasoning that the time period between the signing of the complaint and respondent's termination from the

Simon firm was only one or two months. The Board disagrees. The complaint should have been filed immediately after it was signed. The DEC properly found, however, that respondent misrepresented the status of the matter to Mirelli. In Rampacek, the DEC did not find a lack of diligence, deeming it to be subsumed within the finding of gross neglect. The Board, however, determined that a finding of both violations was appropriate. Finally, in Ostek, the DEC found respondent guilty of misrepresentation, but not of gross neglect. The Board concurs. Respondent clearly took some steps in Ostek's behalf in connection with the bankruptcy, resolving the matter with the state and preventing a levy on Ostek's bank accounts. Respondent's efforts were, however, insufficient. Accordingly, the Board deemed the complaint amended to conform to the proofs, In re Logan, 70 N.J. 222 (1976), and concluded that a lack of diligence is the more appropriate finding.[5]

The only issue left is that of the appropriate measure of discipline. Respondent's conduct involved a combination of gross neglect, lack of diligence and misrepresentation in seven matters. In the past, similar misconduct has generally warranted a reprimand or a brief suspension. See, e.g., In re Martin, 120 N.J. 443 (1990) (public reprimand imposed where the attorney displayed a pattern of neglect in six matters, in addition to misrepresenting to a client in one of the matters that the case was pending, when the attorney knew that the case had been dismissed) and In re Mulkeen, 121 N.J. 192 (1990) (three-month suspension

[5]During a discussion of this count during the hearing, the presenter opined that "the complaint may have been more artfully drafted to allege a lack of diligence," rather than gross neglect.

imposed where the attorney grossly neglected eleven real estate matters. The attorney failed to record deeds and mortgages, failed to pay over a total of $3,600 in title insurance premiums and failed to keep clients reasonably informed about their matters. In aggravation, the Court considered the attorney's previous private reprimand and his failure to cooperate with the district ethics committee).

As noted above, the OAE relied on In re Mark, supra, 132 N.J. 268 (1993), in urging the imposition of a three-month suspension. In Mark, the attorney made misrepresentations to a court in a litigated matter. There was extensive mitigation considered in fashioning the proper form of discipline. Here, although respondent did not make a misrepresentation to a court, her acts of misconduct were numerous, including many instances of misrepresentation to clients. There was clearly a pattern of unethical behavior. In addition, respondent was not a new, inexperienced attorney when the first act of misconduct occurred. She had been practicing for about four years. Under these circumstances, the lack-of-supervision defense becomes less compelling, as respondent was experienced enough to handle these matters on her own and to know that what she did was wrong. In light of respondent's numerous acts of misconduct, a suspension is the appropriate quantum of discipline.

The Board considered the OAE's suggestion that the appropriate discipline in this matter is a retroactive three-month suspension. The Board is of the opinion, however, that to impose a retroactive suspension would be to place form over substance. Respondent

would not be subject to an active suspension, but a suspension would still have been the discipline imposed. In the Board's view, in light of the particular circumstances of this case, a suspension is not called for, retroactive or not. The Board was persuaded that respondent's remorse and contrition for her actions were sincere and that she no longer poses a threat to the public. In light of these factors and the passage of time since respondent's misconduct, the Board unanimously found that a reprimand constitutes sufficient discipline for this respondent. The Board also determined that respondent should take the skills and methods courses offered by the Institute for Continuing Legal Education. Two members did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 6/9/99 By: _____

Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Deirdre A. Przygoda
Docket No. DRB 98-440

Argued: February 11, 1999

Decided: June 9, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla							x
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson							x
Total:			7				2

By Isabel Frank 6/30/99
Robyn M. Hill
Chief Counsel