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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-124
District Docket No. I-05-014E

IN THE MATTER OF
SUSAN R. DARGAY
AN ATTORNEY AT LAW

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Decision

Argued: June 15, 2006

Decided: August 16, 2006

Bonnie L. Laube appeared on behalf of the District I Ethics Committee.

Katherine D. Hartman appeared on behalf of respondent.

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

This matter came before us on a stipulation of facts between respondent and the District I Ethics Committee ("DEC"). Respondent admitted that she violated RPC 1.1, presumably (a)(gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to communicate with the client).¹

¹ Respondent's conduct occurred before the 2004 rule revision. Thus, the former rule subsection, RPC 1.4(a), is applicable in this matter.

Respondent was admitted to the New Jersey bar in 1987. In 2002, she received an admonition for misconduct in two matters. In the Matter of Susan R. Dargay, DRB 02-276 (October 25, 2002). Specifically, respondent represented a client in a matrimonial matter. After the case was completed, respondent failed to promptly submit to the court a final judgment of divorce. In a second matter, respondent was retained to oppose a motion filed by her client's former husband, seeking to emancipate their daughter. Despite respondent's obligation to keep her client informed about the status of the matter, she failed to reply to her letters and telephone calls. In mitigation, we considered that "personal and familial problems impaired [her] ability to maintain the level of communication and diligence expected of the profession." We also considered the lack of harm to the clients.

For the reasons detailed below, we determine that a reprimand is the appropriate degree of discipline in this matter.

In 1999, Deborah A. Stevens retained respondent to prepare a will, a power of attorney, and an advance directive. The parties (presumably respondent and Stevens) met to discuss the terms of the documents. In August 1999, respondent billed Stevens \$125 for their preparation. She never completed the documents, however.

Respondent also represented Stevens in a matrimonial matter. In October 2003, the court entered an order pertaining to several issues, including modification of a prior child support order. An error in the order caused Stevens to receive \$50 less per week than her entitlement. Although respondent knew immediately of the error, she did not take the necessary steps to correct the order.

In March 2004, Stevens retained new counsel to make the correction. As a result of the delay in correcting the error, Stevens sustained a loss of \$1,550 in child support payments (\$50 per week for thirty-one weeks) and incurred \$1,614 in legal fees for her new counsel.

In addition, respondent stipulated that she failed to return Stevens' phone calls and failed to keep her informed about the status of the matter.

Several years earlier, in October 2000, a form of Qualified Domestic Relations Order ("QDRO") was circulated between counsel. Because respondent "failed to follow up on those documents," the QDRO was never completed or filed. Stevens learned of the problem in January 2005, at which time she retained new counsel to complete the QDRO. Stevens incurred an additional \$1,630.80 in legal fees.

In mitigation, the parties stipulated that, prior to these events, respondent and Stevens had a stable attorney-client

relationship for many years. At the end of the relationship, respondent forgave Stevens' uncontested fee balance of \$3,097 and paid her \$1,822.51 in restitution.

Respondent stipulated that she violated RPC 1.1 and RPC 1.4(a) in the matrimonial matter, and RPC 1.3 in connection with the testamentary documents.

The DEC recommended that respondent receive an admonition and be required to establish an office management system.

Upon a de novo review of the record, we are satisfied that the stipulation sufficiently establishes that respondent was guilty of unethical conduct.

As noted above, in 2002, respondent received an admonition for conduct similar to that in the present matter. At that time, we considered that respondent's personal and familial problems had impaired her ability to maintain the level of diligence and communication expected of a member of the bar. There is no reference to any mitigating factors in the matter now before us. Our review of the record in respondent's 2002 admonition revealed that she was, indeed, going through a difficult time. As summarized by the DEC panel in 2002:

During the time frame [in question] respondent's husband was acting as her secretary and bookkeeper. Respondent's father-in-law was dying, causing respondent's husband to be depressed, with adverse impacts on his work performance. Respondent effectively had no secretary

during the pendency of this matter. Further, respondent's mother had recently died of breast and lung cancer. During her mother's illness, respondent had to spend every third week in Florida caring for her mother, alternating with her two sisters. Her father, an attorney, was suffering from senile dementia, and the burden fell on respondent to handle both his practice and his health care. Respondent was also being treated for depression, and the combination of these factors affected her performance. Respondent, however, did not reach out to Lawyers Assistance or similar programs. There was no indication that respondent curtailed her practice.

[HPR4-HPR5.]²

Although that record does not specify the timing of the above unfortunate occurrences, it reveals that respondent's misconduct took place in 1999 through 2000. In the instant matter, the misconduct occurred in 1999 through 2003. It, therefore, went beyond the time in which we know she was impaired. Furthermore, respondent did not advance these events to mitigate her infractions in this matter. We have, however, considered the restitution made to Stevens as a mitigating factor.

The DEC recommended that respondent receive an admonition for this matter. However, an admonition for the charged violations would be appropriate only in the absence of a

² HPR refers to the hearing panel report in DRB 02-076.

disciplinary history. Respondent has already received an admonition for similar conduct. Had it not been for the problems that beset respondent at that time, a reprimand would have been imposed. Here, respondent's ethics transgressions occurred, in part, following her prior run-in with the disciplinary system. It seems, thus, that respondent has not learned from her prior mistakes.

In light of the foregoing, we determine that a reprimand is warranted in this case. See, e.g., In re Oxfeld, 184 N.J. 431 (2005) (reprimand by consent for lack of diligence and failure to communicate with the client in a pension plan matter; two prior admonitions); In re Aranquren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); and In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand).

In addition, within six months from the date of this decision, respondent is to submit proof of completion of a course on law office management, approved by the Office of Attorney Ethics.

Chair O'Shaughnessy and Member Boylan would impose an admonition.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
William O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Susan R. Dargay
Docket No. DRB 06-124

Argued: June 15, 2006

Decided: August 16, 2006

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Did not participate
O'Shaughnessy				X	
Pashman			X		
Baugh			X		
Boylan				X	
Frost			X		
Lolla			X		
Neuwirth			X		
Stanton			X		
Wissinger			X		
Total:			7	2	


Julianne K. DeCore
Chief Counsel