SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-184
District Docket Nos. XIV-00-146E and VA-05-901E

IN THE MATTER OF

MARIA INES GONZALEZ

AN ATTORNEY AT LAW

Decision

Argued: September 21, 2006

Decided: December 5, 2006

Melissa A. Czartoryski appeared on behalf of the Office of Attorney Ethics.

Tomas Espinosa 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 recommendation for discipline filed by the District VA Ethics Committee ("DEC"). Respondent allowed a non-lawyer employee to engage in the practice of law, shared fees with a non-lawyer, and allowed the use of a signature stamp on trust account checks. We determine to impose a six-month suspension.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.15(d) and R. 1:21-6(c)(1)(A) (failure to comply with recordkeeping requirements), RPC 5.3 (failure to properly supervise non-lawyer assistants), RPC 5.4(a) (a lawyer shall not share legal fees with a non-lawyer), RPC 5.4(b) (a lawyer shall not form a partnership with a non-lawyer), RPC 5.5(b) (assisting a person who is not a member of the bar in the unauthorized practice of law),[1] RPC 7.2(c) (in connection with an advertisement, a lawyer shall not give anything of value for recommending the lawyer's services), RPC 7.3(d) (a lawyer shall not compensate a person or organization for recommending the lawyer's employment), and RPC 8.4(a) (assisting another to violate the Rules of Professional Conduct).

Respondent was admitted to the New Jersey bar in 1987. She has no history of discipline.

Respondent is also admitted to practice in New York and in the District of Columbia. During the period relevant to this matter, she maintained three law offices: two in New Jersey and one in New York.

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[1] The complaint was filed in 2005. Under the 2006 Court Rules, the applicable rule is RPC 5.5(a)(2).

On the date of the DEC hearing, respondent's counsel and the presenter placed a stipulation of facts on the record.

In 1994, respondent hired Gregory Escandell as an office manager/paralegal. Although Escandell, a licensed insurance adjuster, had graduated from law school, he had not passed the bar exam. Respondent was aware that Escandell was not a licensed attorney. With respondent's knowledge and consent, Escandell performed the functions of a lawyer in personal injury matters, including, but not limited to, interviewing clients; executing retainer agreements in respondent's name; preparing and executing correspondence, pleadings, and releases in respondent's name; obtaining medical records; making settlement demands; negotiating settlements with insurance claims adjusters; explaining to clients their rights; having clients sign releases and checks; compiling medical bills and other liens; depositing settlement proceeds into the trust account; and making disbursements from the trust account. As the presenter stated, Escandell performed "everything short of going to court, in terms of at least respondent's knowledge and consent."

At oral argument before us, respondent's counsel affirmed that Escandell's actions were undertaken with respondent's supervision, and that she examined and approved every document.

In addition to the activities listed above, Escandell was attending depositions and appearing in municipal court on behalf of clients of respondent's law firm. The OAE stated that it could not prove by clear and convincing evidence that respondent directed Escandell's activities or knew about them in advance.

At oral argument, respondent's counsel stated that respondent did not know that Escandell was making court appearances. Counsel explained that respondent had an arrangement with another attorney who would appear for her when she had a scheduling conflict. However, instead of contacting the other attorney to arrange for his appearance, Escandell would make the appearance himself. In response to a Board member's inquiry on whether respondent would review files, following an appearance by this other attorney, counsel replied that respondent was unaware of these files because Escandell had opened them without her knowledge. The record does not reveal the number of such files.

The parties agreed before the DEC that respondent failed to supervise Escandell "at a level that the Rules of Professional Conduct require." On that score, respondent's counsel offered in mitigation that, once respondent learned of Escandell's activities, she contacted the proper authorities and

participated in an investigation that led to Escandell's arrest.[2] The presenter took no position on the proffered mitigation.

Periodically, respondent used a signature stamp on checks drawn on her trust account. Respondent also permitted Escandell and her bookkeeper, Carol Escandell (Gregory Escandell's wife), to use the stamp. Exhibit 15 reveals that the signature stamp was used on more than 300 trust account checks over a period of nearly two years, from June 1999 to May 2001. Respondent claimed no knowledge that the use of a signature stamp is prohibited.

Respondent's counsel added on this topic that

> the Respondent was examined in one of those teaching audits that are done by the Ethics Committee, and no client has been hurt, no funds of client [sic] were misapplicated, or anything of that nature. And it was, in fact, the Respondent who discovered the matter and took action in order to correct it.
>
> [T14.][3]

Once again, the presenter took no position on these mitigating statements. At oral argument before us, the presenter stated that "[t]here was an audit done. There was no misappropriation that would be determined. It was not

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[2] Escandell pleaded guilty to engaging in the unauthorized practice of law, in violation of N.J.S.A. 2C:21-22(b)(1).

[3] T refers to the transcript of the DEC hearing on March 29, 2006.

determined that any clients were harmed." There are no allegations that respondent misappropriated client funds or that her failure to supervise Escandell led to his misappropriation of client or law firm funds.

Count two of the complaint stated that Escandell received a portion of his compensation in the form of a salary. At the DEC hearing, the complaint was amended to allege that Escandell received compensation on a non-salaried, 1099 basis. Exhibit 11 is the transcript of an interview of Escandell conducted by Brian Gillet, a former OAE deputy ethics counsel. According to Escandell, beginning in 1997, respondent paid him referral fees (a percentage of settlements) for bringing in cases to the office. Exhibits 17 through 22 show that the timing of fees received by respondent's office and the timing of payments to Escandell, who received a 1099 form at the end of the year, were virtually simultaneous.

Contrary to Escandell's statement, at oral argument before us respondent's counsel stated that respondent would pay Escandell "based on her appreciation of his work. Sometime [sic] it was per hour. Sometime it was just because of the quality of the work done by him." Counsel denied that the payments were calculated as a percentage of the fees paid to respondent.

The parties stipulated that respondent violated RPC 1.15(d), RPC 5.3(a), RPC 5.4(a), RPC 5.5(b), and, in connection with personal injury matters, RPC 8.4(a).[4]

The presenter recommended that respondent receive a three- to six-month suspension. Respondent's counsel, in turn, urged the DEC to recommend a reprimand or a term of probation, given the passage of time since her infractions. In mitigation, counsel pointed to respondent's character and good reputation in the legal community, her lack of prior discipline, her admission of wrongdoing, her cooperation with disciplinary authorities and law enforcement officials, and the lack of harm to any client. Counsel contended also that this was "an isolated circumstance that is unlikely to occur."

In light of the stipulated facts and exhibits, the DEC concluded that respondent violated RPC 5.3(a), RPC 5.5(b), and RPC 8.4(a) by failing to supervise a non-lawyer, assisting a non-lawyer in the unauthorized practice of law, and knowingly assisting another to violate the Rules of Professional Conduct,

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[4] The DEC transcript is somewhat unclear. Respondent's counsel stated, "[w]e clarify that this is only with respect to the personal injury matters, and also we clarify that the inadequate supervision didn't come to the degree of the R.P.C." It is clear, however, that the parties stipulated that respondent violated the five cited rules.

respectively. In addition, the DEC found clear and convincing evidence that respondent violated RPC 1.15(d) and R. 1:21-6(c)(1) by not complying with the recordkeeping requirements, and that respondent shared fees with a non-lawyer, in violation of RPC 5.4(a). The DEC was unable to conclude that respondent violated RPC 1.1(a), RPC 1.1(b), RPC 5.4(b), RPC 7.2(c), and RPC 7.3(d).

Taking into account respondent's cooperation and contrition, the DEC recommended that she be suspended for a period of three months.

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

The record supports the conclusion that respondent violated the five stipulated RPCs, as well as R. 1:21-6. We agree with the DEC's dismissal of the remaining charges. There is no evidence that respondent neglected any of her clients' cases or formed a partnership with Escandell, violations of RPC 1.1(a), RPC 1.1(b), and RPC 5.4(b). As to RPC 7.2(c), that rule deals with attorney advertising, which is not at issue here. RPC 7.3(d), which directly prohibits an attorney's sharing fees based on client referrals, would be the more applicable rule, were we to find that respondent employed Escandell as a

"runner." The facts as stipulated, however, do not clearly and convincingly support a finding in this context, notwithstanding Escandell's statement to the OAE that respondent paid him referral fees. Without a hearing on this issue, we are bound by the stipulated facts.

On the other hand, the stipulated facts establish that respondent compensated Escandell either based on the number of hours he worked or on the quality of his work. The record demonstrates that he was compensated not for procuring clients, but for his work as "a lawyer." Respondent's payments to Escandell were, thus, clearly improper and in violation of RPC 5.4(a).

In sum, we find respondent guilty of violating the recordkeeping rules, failing to supervise non-lawyer assistants, sharing legal fees with Escandell, assisting him in the unauthorized practice of law, and also assisting him to violate the Rules of Professional Conduct. These are serious violations.

As to the improper use of a signature stamp on trust account checks, we note that in In re Brown, 143 N.J. 407 (1996), the Court imposed a reprimand for the attorney's failure to perform quarterly reconciliations and his use of a signature stamp. Although the prohibition against the use of a signature

stamp is not specified in the recordkeeping rule (R. 1:21-6), it is clearly spelled out in caselaw. See also In re Murray, 185 N.J. 340 (2005) (reprimand for attorney guilty of failure to supervise employees and recordkeeping violations, including the use of a signature stamp).

In cases involving fee-sharing with a non-lawyer or assisting a non-lawyer in the unauthorized practice of law, frequently accompanied by other violations, the discipline has ranged from a reprimand to a lengthy suspension. See, e.g., In re Gottesman, 126 N.J. 376 (1991) (reprimand imposed on attorney who divided his legal fees with a paralegal; the attorney aided in the unauthorized practice of law by allowing the paralegal to advise clients on the merits of claims and by permitting the paralegal to exercise sole discretion in formulating settlement offers); In re Carroll, 118 N.J. 437 (1990) (reprimand for attorney who waived his fee in exchange for a referral; the attorney was also guilty of other unrelated misconduct); In re Silber, 100 N.J. 517 (1985) (reprimand for attorney who failed to inform the court that his law clerk had made an ultra vires appearance; contrary to the attorney's instructions, the law clerk took it upon herself to represent a client at a hearing; although the attorney chastised the law clerk, he failed to advise the court of the incident; also, when the attorney

received the proposed form of order showing the law clerk as the appearing attorney, he failed to contact the court to correct the misrepresentation); In re Weinroth, 100 N.J. 343 (1985) (reprimand for attorney who agreed to return to a client a portion of his legal fee, knowing that the monies would be paid to a non-lawyer for his recommendation of the law firm); In re Chulak, 152 N.J. 553 (1998) (three-month suspension for attorney who allowed a non-lawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on his attorney business account; the attorney then misrepresented to the court his knowledge of these facts); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who entered into a law partnership agreement with a non-lawyer, agreed to share fees with the non-lawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation that marketed and sold living trusts to senior citizens; the attorney filed a certificate of incorporation in New Jersey on behalf of the corporation, was its registered agent, allowed his name to be used in its mailings, and was an integral part of its marketing

campaign, which contained many misrepresentations; although the attorney was compensated by the corporation for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement; he also assisted the corporation in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter for attorney who assisted a non-lawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and misrepresented to the clients both the purchase price of a house and the amount of his fee).

Respondent's abdication of her responsibilities as an attorney was egregious. That she would not know who was making court appearances for her clients or even what cases were being handled by her office shows a lack of control over her law office that simply cannot be tolerated. Respondent surrendered every one of her responsibilities to the Escandells. It is only fortuitous that there was no harm to her clients.

In this regard, we found of interest exhibit 1, the transcript of respondent's September 14, 2001 statement to the Union County Prosecutor's Office. That document was admitted into evidence at the DEC hearing, with no objection by

respondent. We stress that there were no allegations of misappropriation against respondent or allegations that her failure to supervise Escandell led to his misappropriation of client or law firm funds. The following excerpt from exhibit 1 reveals, however, the extent to which respondent relinquished control of her law office:

> Q. Recently has a problem arose [sic] about your trust and business accounts?
>
> A. Yes.
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> Q. Can you please explain in detail?
>
> A. Yes I will. There was an insurance case of Maria Koren, who recently in July called me at the office regarding her settlement check. I went to look at the file, saw that a check for $30,000 came in and called Carol to find out where is the money because I could not find it in the trust account. She then explained to me that Greg had to speak to me regarding this money. After Greg came from the bar exam in July, he admitted to me that he took part of the settlement money that belongs to the office plus the client for himself and that he did it by mistake and would repay the money by one week. As of this date, the money has not been returned to the office. Last week I spoke to Carol and Carol said they needed the money and the money would be repaid to the office with another settlement check because she takes one settlement check from another and gives that settlement to somebody else. But I closed the trust account in July 2001, and took Carol and Gregory's name out of the business account. This was also done at the same time I closed the trust account. Carol

had a signature stamp, which I took out of her desk.

. . . .

Q. Is there more than one client that there appears to be a misappropriation of funds?

A. Yes there is, but I can't get to the books or the files because Gregory is hiding them from me and he keeps his office locked, I have spoken to Carol to open the office, she claims that she doesn't have the key.

. . . .

Q. According to your recollection, how much do you feel in total has Gregory and/or Carol Escandell have taken from the trust account for their own personal use?

A. To [sic] much to say.

[Ex.1 at 7 to 9.]

As mentioned earlier, the OAE presenter informed us, at oral argument, that an audit of respondent's attorney records showed no misappropriation or harm to any clients. Neverless, the enormity of the potential harm to respondent's clients cannot be overlooked. Moreover, this was not an "isolated circumstance," as respondent's counsel would have us believe, but an ongoing course of behavior.

It is difficult to liken respondent's conduct to that found in the above cases because of the combination of violations here. Taken separately, respondent's recordkeeping violations would merit only a reprimand, as in Brown. As to her sharing

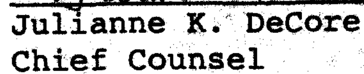
fees with an employee, and assisting in the unauthorized practice of law, the closest case factually is Gottesman (a reprimand). Respondent's conduct, however, was far worse than Gottesman's. Even accepting her contention that she did not know that Escandell was appearing in court, her total abdication of her responsibilities alone merits more serious discipline than a reprimand. Furthermore, although there are no charges against respondent stemming from the Escandells' activities in connection with her attorney trust account, her complete surrender of her practice highlights the magnitude of the harm that could have befallen her clients. Assuming that either a censure or a three-month suspension would be the appropriate measure of discipline for respondent's fee-sharing and aiding in the unauthorized practice of law, when her recordkeeping violations and her complete lack of concern for the proper management of her office and the well-being of her clients are added to the mix, we conclude that a six-month suspension is required in this case. In addition, we determine that respondent should practice under the supervision of an OAE-approved proctor for a period of one year.

Vice-Chair Pashman and Member Neuwirth agree with the majority's determination that a proctor for one year is

appropriate, but would impose a three-month suspension. Members Boylan, Stanton, and Wissinger 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
William O'Shaughnessy, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

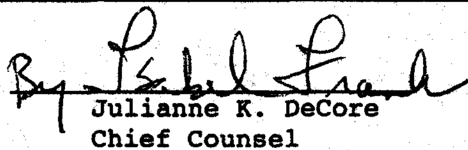
In the Matter of Maria Ines Gonzalez
Docket No. DRB 06-184

Argued: September 21, 2006

Decided: December 5, 2006

Disposition: Six-month suspension

Members	Six-month Suspension	Three-month suspension	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman		X			
Baugh	X				
Boylan					X
Frost	X				
Lolla	X				
Neuwirth		X			
Stanton					X
Wissinger					X
Total:	4	2			3



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