SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 03-385
DRB 03-386

IN THE MATTER OF	
E. LORRAINE HARRIS	Decision
AN ATTORNEY AT LAW	

Argued: January 29, 2004

Decided: March 12, 2004

Mati Jarvi appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1994. On September 28, 1999, she was temporarily suspended for potential misappropriation of escrow funds. In re Harris, 162 N.J. 2 (1999). On October 26, 1999, she was reinstated, with certain restrictions. On January 10, 2000, she was temporarily suspended for failure to comply with a fee arbitration determination. In re Harris, 162 N.J. 189 (2000). She was reinstated on January 19, 2000. On

September 7, 2000, she received a reprimand for failure to provide a client with the basis or rate for her fee, in writing, and failure to utilize a retainer agreement. In re Harris, 165 N.J. 471 (2000). In 2000, she received an admonition in connection with another matter, in which she also failed to provide to the client, in writing, the basis or rate for her fee. In the Matter of E. Lorraine Harris, Docket No. DRB 99-037 (September 27, 2000). On May 8, 2001, effective June 4, 2001, she was suspended for six months for gross neglect, lack of diligence, charging an unreasonable fee, failure to safeguard client property, failure to promptly deliver funds to a third party, recordkeeping violations, false statements of material fact and misrepresentations in letters to a municipal court about her failure to appear at a hearing and about her receipt of court notices, failure to cooperate with disciplinary authorities, and misrepresentation. Thereafter, on June 4, 2001, the Court temporarily stayed the suspension to allow the full Court to review her motion for reconsideration and remand. On June 5, 2001, the Court vacated the temporary stay and denied respondent's motion. In re Harris, 167 N.J. 284 (2001).

Also on May 8, 2001, respondent was suspended for three months, effective December 4, 2001, for lack of diligence, failure to expedite litigation, knowingly making a false statement of material fact to a tribunal, failure to cooperate with disciplinary authorities, and misrepresentation. In that case, respondent requested and obtained numerous last-minute adjournments of a client's municipal traffic matter. On one trial date, respondent failed to appear. Later that day, the judge found a "faxed" letter from respondent on the court's fax machine, thanking the court for granting her adjournment request that morning. However, no such request had been made or granted by the judge. In re Harris, 167 N.J. 284 (2001). Although respondent's last suspension expired on March 4, 2002, she has not applied for

reinstatement. Further, a matter is pending with the Supreme Court in which we recommended the imposition of a one-year suspension for a variety of misconduct in five matters, including gross neglect in two of the matters, lack of diligence in four of the matters, failure to communicate with the client in three of the matters, lying to a court in two matters, failure to return the entire file upon termination of the representation in one of the matters, and conduct prejudicial to the administration of justice in one of the matters. In the Matter of E. Lorraine Harris, Docket No. DRB 03-150.

I. **The Rodriguez Matter** – Docket No. DRB 03-385; District Docket No. IV 03-022E

The complaint alleged that respondent violated RPC 1.3 (lack of diligence), RPC 1.16(d) (failure to return unearned fee [after fee arbitration determination]), RPC 1.5(a) (excessive fee), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists) and RPC 8.4(c) (misrepresentation) in a workers' compensation case.

Juan J. Rodriguez retained respondent in or about January 1996 in connection with a workers' compensation claim, having injured his hand on January 5, 1996, while operating an electric saw for the Penns Grove Carneys Point School District. Respondent filed a claim petition in Rodriguez' behalf on or about February 6, 1996.

According to Rodriguez, who testified at the DEC hearing, respondent conducted their initial interview at Rodriguez' home shortly after the accident. He recalled that respondent wanted to file a civil action against the school district and the saw manufacturer, in addition to a workers' compensation claim. Rodriguez recalled that he told respondent, from their very first meeting, that he did not want her to file a civil suit against the school

district, because he, his wife and mother-in-law were all employed in that school district. Rodriguez was afraid of retaliation.

Little happened in the case until December 1997. On December 10, 1997, the school district's insurance carrier, Selective Insurance Co., Inc. ("Selective"), sent a letter to Rodriguez enclosing a check for $6,212, representing forty-nine weeks' pay, reduced for a 20% permanent partial disability. Respondent also received a copy of the letter. According to Rodriguez, prior to respondent's receipt of that letter, she had begun to telephone him incessantly, "badgering" him for a fee from the settlement. Respondent went so far as to call Rodriguez' wife at work, in an attempt to secure the fee. She told Rodriguez that, as soon as he received the check, to call her.

Upon receipt of Selective's letter, Rodriguez called respondent, who directed him to bring the check to her office. However, according to Rodriguez, his wife objected to that arrangement, fearing the loss of the entire amount to respondent. Therefore, Rodriguez deposited the check into his own account. On December 23, 1997, he met respondent at her office and gave her a registered bank check for the entire amount she requested, $1,578.

From that point on, Rodriguez testified, he heard nothing from respondent about his case.

Two years later, on November 3, 1999, Rodriguez' case was dismissed for lack of prosecution. On November 23, 1999, respondent filed a motion to vacate the dismissal.

Rodriguez testified that, in the latter part of 1999, he became increasingly dissatisfied with the representation. He had grown uncomfortable with respondent, who, he claimed, had resorted to personal attacks because his wife was involved in Rodriguez' decision-making. According to Rodriguez, he placed great trust in his wife's advice, and had explained that to

respondent. Further, Rodriguez testified that respondent had attempted to embroil them in her own personal problems, which included charges of racism, bigotry and harassment against her by numerous officials in and around the judicial system. Rodriguez thought it unprofessional that respondent sought to personalize the representation in that manner.

On December 2, 1999, respondent wrote to Rodriguez to set up a meeting, after Rodriguez had discussed his case with an attorney in the law firm of her Court-appointed proctor, Angelo Falciani, Esq. However, most of the letter was devoted to issues unrelated to the workers' compensation case. For example, it contained long passages about respondent's dealings with ethics authorities, her fears of discrimination because of her status as a minority female, childhood prayer vigils with her evangelist-missionary mother, and the like. Respondent also pleaded with Rodriguez to allow her to continue the representation, because she had "invested three years" to "bring it to fruition." Respondent's letter did not disclose to Rodriguez that the matter had already been dismissed, or her motion to vacate the dismissal.

Shortly after receiving respondent's letter, on December 14, 1999, Rodriguez wrote to respondent that he wished to terminate the representation. He directed respondent to forward his file to his new attorney, Larry S. Byck, Esq.

Byck notified respondent by letter dated December 16, 1999, that he now represented Rodriguez. He enclosed a substitution of attorney for respondent's signature, and requested that she return it along with portions of the file. In addition, Byck advised respondent that she had not been entitled to a fee from the $6,212, because it was a "bona fide offer" from the carrier. He stated as follows:

> I have been practicing New Jersey Workers' Compensation for over 12 years and, I am not aware of any statute that allows you to receive any fees or reimbursement of cost which are not approved and assessed by the court.

> Thus, I don't know where you get the authority to have you write the client a check for fees concerning his case. If this is truly a bona fide offer you would not be entitled to any fee on the money that was tendered to the client.[1] If the money was not a bona fide offer, only the judge can assess fees in the case which is solely in his or her discretion.
> [Exhibit 8.]

Byck forwarded a copy of the letter to respondent's proctor, Falciani. On December 21, 1999, Falciani, too, wrote to respondent as follows:

> This is to confirm my verbal advice to you, past and on this date, that you immediately copy the file and immediately deliver the original file to Attorney Byck.
>
> I also advise that you should immediately make an application to the Court to determine whether the payment was bona fide and to ask the Court to rule on whether you are or are not entitled to a fee and, if entitled, the amount of the fee.
>
> I do note your comments that the sum paid may not have been a fee on the comp case but rather a retainer on account of a personal injury case against the product manufacturer involved with the accident, which action you spent time on, but at the discretion of the client was not pursued.
> [Exhibit 9.]

Falciani then advised respondent to seek a judicial determination regarding her claim to the $1,578 fee, and to return the money to Rodriguez if it was determined that it did not belong to her.

On January 5, 2000, Byck replied to Falciani. He reiterated his belief that respondent was not entitled to a fee from the settlement proceeds and requested their return. He offered to consider an installment plan for repayment, based on respondent's difficult financial situation. He closed the letter with the following observation:

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[1] Indeed, respondent, too, had characterized the payment as a bona fide settlement in her December 2, 1999 correspondence to Rodriguez.

> Because of my respect for your office as well as your reputation, I would gladly be willing to work with [respondent] on any arrangements to have the funds returned to my client. Let me advise you that if [respondent] does file a motion, the court may be obligated at that time after hearing the motion, to report her actions to an ethics committee. I am not sure what my legal responsibilities are but I am not looking to get any fellow attorney in any trouble.
>
> I thank you for your anticipated courtesy and cooperation in this regard.
> [Exhibit 10.]

On January 10, 2000, Falciani wrote to respondent and enclosed a copy of Byck's January 5, 2000 letter. Falciani advised respondent as follows:

> I must advise that until a Judge of Compensation awards any fees to you, the sums retained, if taken as fees in the compensation matter, should be paid to Juan Rodriguez and sent to [Byck]. If you see fit, you may make an application for fee to the Judge of Compensation. If you are unable to make payment at this time, make arrangements for payment directly with [Byck].
>
> I do recall that you made reference to the fact that the sum of money paid to you was a retainer against other legal services rendered or to be rendered. Please articulate your claim to retain the funds in question for reasons other than a fee in the compensation matter.
> [Exhibit 11.]

On January 26, 2000, respondent wrote to the workers' compensation judge who had handled the matter prior to its dismissal in 1999. In the letter, she acknowledged that Byck had substituted in as Rodriguez' attorney. The letter also stated respondent's recollection that, prior to taking her fee, she "had discussed with the court what would be an acceptable fee. I did not file a formal motion, used that verbal advice and applied it to the amount received by Mr. Rodriguez." Finally, respondent asked for the court's indulgence, noting that her temporary suspension from the practice of law had prevented any earlier filing. She also noted that she had, "on today," retrieved her file from interim counsel, Aaron M. Smith, who

had taken over the file during her absence.

On February 11, 2000, Byck wrote to respondent that, although he had received a copy of respondent's letter to the court, he had not yet received a copy of respondent's motion, which she claimed to have mailed on January 26, 2000. Further, Byck reiterated his position that respondent was not entitled to a fee from Rodriguez' bona fide settlement, and that she risked facing ethics charges if she failed to return the funds. He closed his letter as follows:

> As I have expressed in the past, I am not looking to get you in any trouble. However, I am an advocate for my client who has been deprived [sic] a share of bonafide moneys [sic] that are his for over two years. I suggest you act promptly.
> [Exhibit 13.]

Hearing nothing from respondent, on or about March 13, 2000, Rodriguez filed a fee arbitration with Byck's assistance. On June 20, 2000, the fee arbitration committee awarded Rodriguez the full amount taken by respondent ($1,578). The determination stated in part:

> N.J.S.A. 34:15-64 indicates that only a court of law may enter an award of attorney's fees in a worker's compensation matter in a reasonable amount not to exceed 20% of the judgment. The amount charged by [respondent] was in excess of 25%. Additionally, the statute provides that the reasonable allowance for attorney's fees to be awarded by the court shall be based only on that part of the judgment or award in excess of the amount of a bona fide offer of settlement. Since the initial $6,272.00 received by the client was acknowledged by the attorney to have been received as a bona fide settlement payment, the attorney was not entitled to any fees on this amount.
> [Exhibit 15.]

Respondent testified at the DEC hearing that Rodriguez first sought her advice in order to file a personal injury and product liability action against the school district and the saw manufacturer. According to respondent, a blade protector had been removed from the saw before Rodriguez used it. In fact, she claimed to have made several telephone calls

earlier in the case to school officials in an attempt to secure the saw as evidence for a suit.

Respondent was adamant that she had taken Rodriguez' case because of its value as a product liability case. She testified that Rodriguez wanted to file a personal injury and product liability action against the school district and saw manufacturer, and had signed a retainer agreement to that effect. Respondent also recalled drafting a complaint in the matter. However, she could not produce the retainer agreement, the complaint, or any other documents to support her account.

With respect to the whereabouts of her file, according to respondent, the original file in the matter was unavailable because Smith, to whom she had assigned her legal files during her temporary suspension, had been incarcerated before she could obtain it from him.[2] Moreover, respondent lamented, an untimely computer hard-drive failure caused the destruction of backup copies of documents she had prepared in Rodriguez' case, including the retainer agreement and draft complaint. Accordingly, respondent delivered no file to Byck, and produced no documents to corroborate her version of events before ethics authorities.[3]

Finally, respondent claimed, just before the statute of limitations was to expire, as she was preparing to file the complaint, Rodriguez changed his mind, determining not to file the personal injury action.

With regard to the $1,578 fee, respondent's story changed several times. Originally,

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[2] There is no information in the record about the circumstances surrounding Smith's situation.

[3] Byck testified at the DEC hearing about problems obtaining Rodriguez' file from respondent. He stated that, eventually, on January 24, 2000, respondent left a message on his office answering machine that she had requested her interim attorney, Smith, to send the file to Byck. However, he never received the file from respondent or Smith.

respondent had claimed that she took that fee based on "conversations with the [workers' compensation] court." At the DEC hearing, she testified that the fee was actually to reimburse her for out-of-pocket expenses in the personal injury case. According to respondent, she met with Rodriguez in December 1997 to discuss his personal injury case, and told him that she had incurred substantial expenses for which she required repayment. Specifically, she claimed that she held conferences with the school district, retained and paid for an investigator, held conferences with the insurance carrier and the saw manufacturer, and paid for telephone calls to the parties. She also recalled "footing the bill" for a medical doctor who examined Rodriguez. She concluded her testimony on the issue, claiming that Rodriguez owed her far more than the $1,578, as follows:

> Now, I don't have the file. I cannot verify that, but I know that he didn't just walk in there and hand me that money. And what I did was I took the money that he gave me and I deducted it from the overall amount that he owed me and that's how it went. And I said, the rest of it, we'll deal with it down the road.
> [RT118.][4]

Respondent was asked if she had evidence, independent of her file, such as a check register or receipts to support her claim that she incurred expenses in the case. Respondent replied that she did not. She further claimed that she had probably paid her experts in cash, apparently without obtaining receipts from them.

Respondent also contradicted her own testimony. At first, she claimed that her focus was on the personal injury matter — suing the school district. When it was pointed out that she had apparently not filed the requisite notice of intent to sue the school district, she stated that, "I may have misspoke [sic] . . . . I intended to bring them in if it was necessary."

Respondent then sought to clarify her position, stating that she had intended to sue the saw manufacturer, not the school district. However, she could not recall any specifics about the saw, such as the brand or manufacturer. She testified generally about taking steps to protect Rodriguez' personal injury/product liability case, but produced nothing to corroborate any of her statements in this regard.

On the other hand, Rodriguez denied any knowledge of efforts by respondent to forge ahead on the personal injury case. Under contentious cross-examination by respondent, he reiterated his position as follows:

> I repeatedly told you that I didn't want to sue anyone, that was the first thing that I said, and I stuck to my guns, basically, and you were continually saying to me, you should sue, you should sue, you should sue, you should sue, and I said no, I didn't want to because I didn't know if it was going to jeopardize my job, you know, in being employed with the school district, you know, as well for my wife's position also. So this is why I told you — this is why I thought that the money that I — that you got, that you received was to pay for worker's comp, which I didn't know that you were supposed to be paid by the courts. If I would have known that, you wouldn't have got that $1,500 check and we wouldn't be here, or I wouldn't be here.
> [RT70.]

Finally, after retaining Byck, Rodriguez obtained a favorable final settlement in the worker's compensation case. Respondent, however, never returned the $1,578.

The DEC found that respondent failed to turn over the file to Byck upon the termination of the representation and failed to return the $1,578, all in violation of RPC 1.16(d). The DEC also found that respondent violated RPC 3.4(c) by taking a fee to which she was not entitled. Finally, the DEC found a non-specific violation of RPC 8.4(c),

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[4] RT refers to the transcript of the September 2003, DEC hearing.

demanding for a fee from Rodriguez to which she knew she was not entitled. The DEC dismissed the alleged violation of RPC 1.5(a) for lack of clear and convincing evidence about the reasonableness or unreasonableness of respondent's fee. The DEC dismissed the allegation of a pattern of neglect, in violation of RPC 1.1(b), without elaboration, and made no finding with respect to RPC 1.3.

II. **The Hillenbrand Matter** – Docket No. DRB 03-386; District Docket No. IV 03-024E

The complaint alleged violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.4(c) (misrepresentation) in the appeal of a municipal court criminal matter. The complaint also alleged a violation of RPC 1.1(b) (pattern of neglect) for respondent's neglect in these matters, when combined with gross neglect in prior matters.

On or about November 15, 1997, Richard Hillenbrand, the grievant, retained respondent to defend a disorderly persons offense in Woodbury Municipal Court. Hillenbrand had contacted a local politician's office shortly after a successful re-election, to voice his displeasure with the election results. Hillenbrand left a pointed and disturbing message on the politician's answering machine. Hillenbrand retained respondent, who represented him at the March 4, 1998 trial, at which Hillenbrand was found guilty. Thereafter, Hillenbrand retained respondent to appeal the conviction.

On May 26, 1998, respondent filed a timely notice of appeal in Gloucester County Superior Court. Thereafter, on May 28, 1998, the municipal court notified respondent that a check in the amount of $500 was required for transcripts of the several hearing and trial dates. On June 17, 1998, Hillenbrand gave respondent $500 to obtain those transcripts.

Between June 17, 1998 and August 12, 1998, respondent took no action to obtain the transcripts, although Hillenbrand had paid for them. On August 12, 1998, the Superior Court judge entered an order dismissing the appeal for failure to provide transcripts. In a contemporaneous cover letter to both respondent and the municipal court, the judge noted that the municipal court had sent correspondence to respondent on May 28, June 3, and June 24, 1998, advising her to send payment for the transcript, but that respondent had not done so.

On August 18, 1998, respondent finally sent a check for $500 to the municipal court for the transcripts. Predictably, on August 20, 1998, the Woodbury authorities returned the check to respondent, because of the earlier dismissal.

Thereafter, between August 24, 1998 and October 15, 1998, respondent took steps to have the appeal reinstated, filing a motion in Superior Court for that purpose. Although the record contains no order, it is uncontroverted that the appeal was reinstated shortly thereafter.

On February 18, 1999, the Superior Court sent a scheduling order notifying the parties of a March 19, 1999, hearing. The notice also required Hillenbrand's brief to be filed no later than fourteen days prior to the hearing date, or March 5, 1998. On March 17, 1998, respondent contacted the court, requesting a postponement of the matter for thirty days. By letter dated March 19, 1999, the presiding judge granted respondent's request, stating in part, as follows:

> You have not filed your brief, and on March 17, 1999, you called and requested a postponement. This will confirm that I have agreed to a 30 day postponement as you requested, and I have now scheduled the hearing on this appeal for April 23, 1999 at 9:00 a.m. Your brief is due by April 2, 1999, and the prosecutor's reply brief is due by April 16, 1999.
>
> I have reviewed this file and I note that I have once before dismissed your appeal for lack of prosecution as a

> result of a lengthy delay in obtaining the transcript of the municipal court proceedings. I thereafter agreed to reinstate the appeal.
>
> This case was tried in the municipal court on March 4, 1998. Thereafter, the municipal court judge issued a written opinion and scheduled sentencing, which was conducted on May 6, 1998. Needless to say, this is an extremely old case which should have been disposed of long before now. I will not tolerate any further delays. If your brief is not timely filed, your appeal will be dismissed without further notice. [Exhibit 12.]

Respondent did not file a brief. Therefore, on April 14, 1999, the appeal was again dismissed.[5]

On September 17, 1999, the Gloucester County criminal case manager's office received an August 18, 1999, cover letter, notice of motion, and respondent's supporting certification, addressed to the presiding judge. Respondent again sought to reinstate the appeal, claiming that she had been "ill and out of the office on extensive leave" for medical reasons. The court did not consider the motion.

Finally, in February 2000, respondent again attempted to file the motion to reinstate the appeal. This time, respondent included the long-overdue brief and a lengthy certification from Hillenbrand, in which he recited his understanding of the tortuous path that his matter took through the court system. Hillenbrand stated, in part, as follows:

> I am aware of the physical and professional setbacks caused by racism and sexism and suffered by my attorney, Lorraine Harris, also of Gibbstown, New Jersey. Attorney Harris has suffered within the past two years and I believe that part of that suffering was related to her representation of me

[5] The record contains an April 7, 1999, note from respondent's physician, Doctor Reuter, which states that respondent suffered from "severe migraines" and was under the doctor's care since March 22, 1999. It further states that respondent could return to work on April 10, 1999. The note is stamped received by the criminal case manager's office on April 22, 1999. It is not clear under what circumstances respondent sent this document to the court.

in the Woodbury Municipal matter from which I am appealing:

> . . . . I know that because Attorney Harris was unable to perform she did not prepare a submission on time and my case was dismissed. I believe that my case should be reinstated and placed on a strict and expedited time schedule;
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> . . . . Attorney Harris is currently defending me in a matter before the State of New Jersey Board of licensing of social work examiners in which the instant charges were raised to question my ability to practice as a licensed social worker. I could lose my license, be suspended from social work, or be required to undergo mental health counseling if my appeal is not reinstated as a result of what I believe to be the unfair conviction in Woodbury Municipal Court;
>
> That is why we are respectfully requesting that the appeal be reinstated . . . . I am aware my appeal was dismissed once before for failure to secure transcripts and I worked two jobs to secure the funds to pay for the transcripts from the trial court below. I know that Attorney Harris was given consideration, but I am asking that I be granted consideration one more time in that my professional license is at stake and my situation was never really resolved based on the facts I have submitted here.
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> . . . .
>
> Again, I am aware of the professional situation Attorney Harris faced and I still want her to represent me in that I know she is the only lawyer who can effectively present my case.
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> [Hillenbrand Certification at Exhibit 17.]

Respondent's own certification in support of the motion was a rambling account of her problems, both real and perceived, since she was admitted to the New Jersey bar in 1994. For the most part, the certification had little to do with the specifics of Hillenbrand's case.

On August 3, 2000, the Superior Court judge, who had handled the appeal from the outset, wrote to Woodbury court officials, with a copy to respondent, as follows:

> In response to your recent inquiry, please be advised that my Order dismissing this municipal court appeal entered on April 14, 1999 remains the final order in this case.

> As you know, this was the second Order of Dismissal which I entered. I had previously entered an Order of Dismissal on August 12, 1998. Thereafter, upon the application and urging of Ms. Harris, I vacated that order and reinstated the appeal. However, Ms. Harris continued to persist in failing to file her required brief, after which I entered my final order of dismissal on April 14, 1999.
>
> I have not entertained any motions to further re-open this appeal. You may take whatever steps are necessary to collect fines and costs that were imposed by the municipal court.
> [Exhibit 19.]

Hillenbrand testified at the June 20, 2003, DEC hearing, first with respect to the allegation that respondent failed to communicate with him. Initially, Hillenbrand had alleged that respondent was unresponsive to his requests for information. Upon closer questioning, Hillenbrand refined his testimony, admitting that respondent generally replied to him within several days of a request for information. It became evident to the DEC panel that Hillenbrand was upset with respondent not because of the frequency or infrequency of her replies, but for their content. He claimed that respondent kept him in the dark, misrepresenting to him the status of his case. Specifically, he stated that he was unaware that his case had been dismissed until he filed an ethics grievance in November 2000.

When questioned about his comprehensive certification to the court, Hillenbrand testified that he had read the document, but did not "go over it word by word." He also explained that respondent had told him that the document was something that had to be signed in order for the appeal to continue. He further claimed that he did not understand his own certifications. Hillenbrand testified that respondent had repeatedly assured him that delays in the case had been caused by the court. Therefore, he did not take the information to heart.

According to respondent's testimony at the DEC hearing, Hillenbrand was a liar, one

of a group of former clients who sought to capitalize on her publicized problems with ethics authorities. Specifically, she accused him of lying on cross-examination about his mental health.[6] She stated that he had been prescribed Thorazine for his "mood swings," and that she had once seen him take that medication before a court hearing, claiming that mental illness ran in his family.[7]

Respondent claimed that Hillenbrand was untruthful about her communications with him as well. According to respondent, Hillenbrand lived very close to her office, and visited regularly. She frequently updated Hillenbrand on the status of in his case during those visits and over the telephone. She always kept him apprised of important events in the case. Respondent admitted, however, that most of their communications were informal, rather than in writing, due to Hillenbrand's proximity and the frequency of his visits.

With respect to the allegation that she lacked diligence, respondent claimed that she had zealously pursued Hillenbrand's appeal. She blamed the Woodbury municipal court authorities for "confusion" in the case. Respondent alternately claimed that she was turned away when attempting to deliver the payment for the transcripts in Hillenbrand's matter, or was not kept informed about the need for those funds by her own office staff. [8]

So, too, respondent had difficulty focusing on the period of time from June 17, 1998,

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[6] This line of questioning was allowed over the objections of the presenter. The panel agreed to limit its probative value to Hillenbrand's credibility.

[7] In fact, Hillenbrand had denied any history of mental health issues, and denied taking medication of any kind.

[8] Upon close questioning, respondent grudgingly offered that "being turned away," meant that, on one occasion early in the appeal process, she had attempted to deliver a check to the municipal court for partial payment of the transcript costs. The municipal court shared common counter space with the police department. The court was closed, and the police declined to take her check in behalf of the court.

when Hillenbrand paid for the transcripts, and August 18, 1998, when she finally delivered the check to the court. Respondent could not recall why she had not delivered the funds sooner, in order to avoid the August 12, 1998, dismissal.

With regard to the second dismissal, respondent alleged that she suffered at the time from stress-related high blood pressure. According to respondent, she alerted the Superior Court judge to her health problems, and the court "allowed the dismissal to stand." The only evidence related to respondent's health, however, is an April 7, 1999, note from her doctor, received by the court on April 22, 1999, long after her brief was due, and twelve days after the dismissal. The note stated that respondent had been under doctor's care since March 22, 1999, and that respondent could return to work on April 10, 1999, in time to give the court four days' notice of her situation. When asked how that note served to prove her illness, respondent suggested that the doctor may have inserted the wrong dates. She also explained that the doctor's reference to "migraines," not high blood pressure, was consistent with her claimed blood pressure problems, because those two ailments are often found together.

Respondent was also asked to explain the ten-month gap without action from April 1999 to February 2000, when she made her final attempt to file a motion to reinstate the appeal. Respondent claimed that she had determined to "let it ride" – that is, to allow the appeal to sit idle while Hillenbrand's social worker's license was reconsidered. If his license had been restored, she stated, there would have been no need to pursue the municipal appeal any further; therefore, she and Hillenbrand decided to take a "wait and see" attitude in that regard.

Finally, respondent lamented the fact that she was unable to perfect the appeal. She felt confident that, had she been able to do so, Hillenbrand's conviction would have been

overturned.

In a very sparse report, the DEC found that respondent exhibited a lack of diligence "in failing to diligently prosecute the appeal. The DEC panel did not find clear and convincing evidence of violations of *RPC* 8.4(c), *RPC* 1.4 (a), and *RPC* 1.1(b)." The DEC recommended a three-month suspension.

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

In Rodriguez it is not clear to us why the DEC failed to make a finding of a violation of RPC 1.3. The chronology of the matter is clear. The representation commenced in early 1996, and involved a simple workers' compensation claim. For at least two years, from Rodriguez' receipt of the late 1997 bona fide settlement offer until the matter was dismissed for failure to prosecute in November 1999, respondent took little or no action on her client's behalf. The record before us was without information that respondent took any action to protect her client's claim during that time. Moreover, respondent's lack of diligence resulted in the dismissal of the case. Respondent, thus, violated RPC 1.3.

Respondent also violated RPC 1.16(d), which required her to return the unearned fee and the file to Rodriguez. When respondent took the $1,578 from Rodriguez, she knew that she was not entitled to the funds, having been so advised numerous times by both Byck and her proctor, Falciani. By refusing to return the funds, respondent violated RPC 1.16(d). We find an additional violation for her failure to return the file upon the termination of the representation. We do not believe respondent's assertion that she could not do so because she was unable to secure her original file from attorney Smith. First, respondent offered no support for the notion that she gave Smith the file. Secondly, even assuming that she had so

entrusted the file to Smith, respondent produced no evidence that she then sought the file's return. Respondent's unsubstantiated claims lead inexorably to the conclusion that she has no valid defense for her failure to turn the file over to her client. Respondent's misconduct was in violation of RPC 1.16(d).

So, too, respondent knowingly disobeyed an obligation under the rules of the fee arbitration committee, in violation of RPC 3.4(c). On June 20, 2000, the fee arbitration committee awarded Rodriguez the full amount taken by respondent ($1,578). Yet, respondent has steadfastly refused to abide by that committee's determination. Respondent offered several conflicting stories in an effort to thwart an adverse finding under the rule. First, she sought to legitimize her original claim that she earned the fee in the workers' compensation case, implying that the workers' compensation judge had orally approved her fee. No evidence was presented to support that claim. Respondent could have called the judge to testify about the alleged communication, but did not. Indeed, the workers' compensation judge was prepared to testify before the DEC if necessary.

Thereafter, once respondent realized that she could not persuade the DEC that she was entitled to the $1,578 from the workers' compensation matter, she attempted to justify the fee by other means. She concocted a story that the fee was actually repayment of her out-of-pocket expenses and legal services in a personal injury/product liability investigation that Rodriguez had approved: Rodriguez had signed a retainer agreement for the purpose of filing that suit; respondent had retained experts, whom she paid in cash without obtaining receipts; however, original documents were lost when attorney Smith was incarcerated, and a hard-drive failure in her office destroyed her backup copies of pertinent documents. Respondent did not corroborate her stories with any credible evidence. Therefore, we find that

respondent's claims about the personal injury/product liability case, and her various justifications for entitlement to the fee were contrived.

On the other hand, Rodriguez' unwavering account was truthful, wherein he stated that he refused to authorize another suit against "anyone." He wanted only to bring a claim for workers' compensation. It was respondent who badgered him to file a personal injury/product liability suit. The fact remains that respondent was not authorized to file another action, and by statute was prohibited from taking a fee in the workers' compensation matter without court approval. Her refusal to return the fee, in the face of a fee arbitration award against her, was in violation of RPC 3.4(c).

With respect to RPC 8.4(c), the DEC correctly found a violation on the basis that respondent took her fee knowing that she was prohibited from doing so. Respondent admitted at the DEC hearing that it was improper to request a fee from a bona fide offer. Moreover, respondent admitted that Rodriguez' constituted such an offer. Nevertheless, she deceived Rodriguez, misrepresenting to him her entitlement to a fee from those proceeds. In doing so, respondent violated RPC 8.4(c).

In Hillenbrand, respondent lacked diligence, allowing two dismissals of a straightforward appeal from a municipal court conviction. The first dismissal was a direct result of her inexplicable failure to pay the transcript costs. Hillenbrand had paid respondent to obtain those documents, and the municipal court had sent respondent four separate reminders that the $500 costs were due. Yet, respondent took no action in this regard until after the court dismissed the appeal.

Thereafter, to her credit, respondent succeeded in having the appeal reinstated. Once again, however, she allowed the case to fall through the cracks, by failing to file a timely

brief, even after the judge granted a postponement for her to do so. At every turn, despite numerous chances to correct her own deficient representation, respondent continuously "dropped the ball," in violation of RPC 1.3.

The DEC correctly dismissed the allegation of a violation of RPC 1.4(a). Hillenbrand's early testimony that respondent failed to communicate with him was overshadowed by his later testimony that respondent generally kept him informed about the case. Hillenbrand also alleged that respondent kept him in the dark about the dismissals, but he described them in his own certification to the court, which he then claimed he had not understood. That claim strains credulity. Hillenbrand was an articulate witness, whose signed certification contained very plain language. Moreover, Hillenbrand lived very close to respondent's office and was a frequent office visitor. Respondent updated him orally during many of those visits and gave him access to his file so that he could review it or make copies from it. In fact, as a result of that arrangement, respondent did not generate much written correspondence to Hillenbrand. For all of these reasons, we determine to dismiss the allegation of a violation of RPC 1.4(a).

With respect to the allegation that respondent misrepresented the status of the case, by keeping her client in the dark about the dismissals, the evidence is in equipoise. Respondent could not recall with any specificity at what point she advised Hillenbrand that there were problems in his case. On the other hand, Hillenbrand claimed that she always told him that the case was proceeding apace. According to Hillenbrand, he continued to believe that there were no problems, even after he described two dismissals in detail in a certification to the court. As previously noted, Hillenbrand's misunderstanding of his certification was not genuine. It is possible that respondent was forthright in advising him orally about those

problems all along, as she had claimed. For these reasons, we dismiss the allegation of a violation of RPC 8.4(c).

Finally, there remains the allegation of a pattern of neglect, when the misconduct in Hillenbrand is combined with misconduct from other prior disciplinary matters. Gross neglect was not charged or litigated here. Had it been, it is likely that respondent's considerable efforts to correct her mistakes in the case, and to have the appeal reinstated, would have militated against a finding of gross neglect. For both of these reasons, we dismiss the allegation of a violation of RPC 1.1(b).

In summary, respondent's most egregious conduct took place in Rodriguez, where she defiantly refused to return an improperly received fee. In so doing, respondent violated RPC 1.3, RPC 1.16(d), RPC 3.4(c), and RPC 8.4(c). In Hillenbrand, respondent violated RPC 1.3.

Ordinarily, cases involving this type of misconduct, in the presence of a disciplinary record, have resulted in suspension. See, e.g., In re Aranguren, 165 N.J. 664 (2000) (six-month suspension for attorney who, in five matters, exhibited gross neglect, a pattern of neglect, lack of diligence, failure to communicate, and failure to expedite litigation; the attorney made misrepresentations in three of the matters, including one in a certification to a trial court; the attorney also failed to return the files to the client or client's counsel in three of the matters and failed to cooperate with the disciplinary system during the investigation; prior admonition); In re Waters-Cato, 142 N.J. 472 (1995) (one-year suspension for gross neglect, pattern of neglect, misrepresentation and failure to disclose material facts, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice; the attorney had a prior three-month suspension in 1995 and a private reprimand); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for misconduct in seven matters,

including gross neglect, pattern of neglect, lack of diligence, failure to communicate with the clients, failure to deliver client funds, failure to return files, failure to cooperate with disciplinary authorities, and misrepresentation of the status of matters to clients). Respondent has an extensive disciplinary record, including a three-month suspension, a six-month suspension, a reprimand, and an admonition. In addition, we recently recommended a one-year suspension for misconduct in several matters. Therefore, we determine to impose a six-month suspension, to be consecutive to any suspension that may be imposed in the matter now before the Court. One member would have imposed a two-year suspension. Two members did not participate.

We also determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of E. Lorraine Harris
Docket Nos. DRB 03-385 and DRB 03-386

Argued: January 29, 2004

Decided: March 12, 2004

Disposition: Six-month suspension

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Two-year Suspension*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy							X
Boylan		X					
Holmes		X					
Lolla							X
Pashman		X					
Schwartz				X			
Stanton		X					
Wissinger		X					
Total:		6		1			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel