

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-396
District Docket Nos. I-08-009E
and I-08-015E

IN THE MATTER OF :
: :
: :
ARLEEN CABALLERO GONZALEZ :
: :
AN ATTORNEY AT LAW :
: :
:

Decision

Decided: April 20, 2010

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

This matter came before us on a certification of default filed by the District I Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter and to comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.4(d) (failure to advise a client of the limitations on the lawyer's

conduct when a client expects assistance not permitted by the Rules of Professional Conduct), RPC 1.16(a) (failure to decline representation when the representation will result in the violation of the Rules of Professional Conduct or other law), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons expressed below, we find that a censure is the proper discipline for respondent.

Respondent was admitted to the New Jersey bar in 1984. At the relevant time, she maintained a law office in Linwood, New Jersey. According to the complaint, respondent closed her office in 2008 and is not currently practicing law. She has no history of discipline.

Service of process was proper. On October 6, 2009, the DEC sent a copy of the ethics complaint to respondent, by regular and certified mail, at 512 Pierce Avenue, Linwood, New Jersey 08221, the address listed on the Office of Attorney Ethics' attorney registration system as both her office and home address. The regular mail was not returned. The certified mail receipt was returned containing an illegible signature.

On November 5, 2009, the DEC sent a second letter to the same address, by regular and certified mail. The letter notified respondent that, if she did not file a verified answer within

five days, the matter would be certified to us for the imposition of discipline and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The regular mail was not returned. The certified mail receipt was returned containing an illegible signature.

As of the date of the certification of the record, November 24, 2009, respondent had not filed an answer to the ethics complaint.

The Cordero Matter

Count one charged respondent with violating RPC 1.1(b), RPC 1.3, RPC 1.4(b), and RPC 1.4(c).

On March 24, 2006, Candelario Cordero retained respondent to investigate his wife's immigration case. Cordero entered into a fee agreement with respondent for that purpose and paid her a \$500 retainer.

By letter dated March 29, 2006, respondent informed Cordero that the investigation was complete and that he had to obtain a waiver for his wife to enter the United States.

Respondent and Cordero entered into a second retainer agreement for a waiver application. Cordero made a partial payment towards respondent's additional \$1,500 retainer. A July 21, 2006 Notice of Decision from the U.S. Department of Homeland

Security, U.S. Citizenship and Immigration Services, indicates that an application for a waiver was filed (by whom is not known) and denied, and that any appeal had to be filed within thirty days from the date of the notice on the enclosed form I-290B, together with a \$385 filing fee. The notice was addressed to Cordero.

According to the complaint, respondent notified Cordero about his right to appeal the waiver denial and about the required filing fee. Cordero provided respondent with an additional \$385 to file the appeal. Respondent, however, failed to take any action in connection with the appeal.

Respondent repeatedly informed Cordero that the appeal had been filed and that it was pending. That was untrue. Respondent never filed the appeal and never remitted the filing fee to the Administrative Appeals Unit. Respondent did not inform Cordero that she had not filed the appeal and did not communicate with Cordero, despite his repeated attempts to contact her.

Among other things, the complaint charged respondent with a pattern of neglect, based on her conduct in this matter, her conduct in the Murcia matter (below), and previous conduct that had been the subject of an agreement in lieu of discipline.

The Murcia Matter

Count two charged respondent with violating RPC 1.1(b), RPC 1.3, RPC 1.4(b) and (c), RPC 1.4(d), RPC 1.16(a), and RPC 8.4(d).

On October 16, 2007, Edgar Murcia retained respondent to defend him in a Pennsylvania civil suit, filed by his former employer. Murcia's former employer sought to restrain him and his company, Edgar Murcia Productions, L.L.C., from engaging in certain business activities.

Respondent represented to Murcia and to Murcia's former attorney that she was licensed and eligible to practice law in Pennsylvania. However, she had been on inactive status in Pennsylvania for many years. According to the complaint, respondent should have known of her ineligibility to practice law in Pennsylvania.

On November 26, 2007, respondent appeared on Murcia's behalf at an initial hearing in Philadelphia. Thereafter, it became "difficult, if not impossible," for Murcia to contact respondent, despite his repeated efforts to do so.

In February 2008, Murcia learned that the Pennsylvania court had issued a preliminary injunction shutting down his business. Respondent had not informed Murcia that there was a pending injunction proceeding or that an injunction had been

issued. According to the complaint, respondent did not submit a defense to the "action."

After Murcia learned about the injunction, he again tried to contact respondent. Respondent, however, did not reply to Murcia's telephone calls and, in addition, either did not attend or cancelled several meetings that her secretary had scheduled with Murcia.

Attached to the Certification of the Record as Exhibit F is a letter from respondent to the DEC, dated July 23, 2007, replying to the DEC's initial investigation of the grievances against her. Respondent described compelling circumstances to explain the turmoil in her life, but not to excuse her conduct. Although the letter does not actually specify when any of the circumstances took place, presumably they began to unfold in 2004. The following is a synopsis of respondent's letter.

After graduating from law school, in 1984, respondent practiced law for a couple of years with a Vineland, New Jersey, law firm. That same year she got married. When she and her husband decided to start a family, she stopped practicing law. Instead, she obtained employment at a local college, where she worked for twenty years.

She returned to the practice of law, presumably in 2004, when her children became older. As a bilingual Hispanic woman,

she wanted to provide affordable legal services, primarily to Hispanic clients. She opened a small office in Pleasantville, New Jersey, and soon developed a clientele.

Approximately six months after she opened her practice, her seventy-eight-year old father murdered her seventy-five-year old mother and unsuccessfully attempted suicide. Her parents had been married for fifty-five years. Respondent's mother suffered from Alzheimer's disease for approximately ten years before her death. Her father also suffered from a multitude of serious health problems but had, nevertheless, insisted on caring for his wife by himself.

Respondent's parents resided in Florida. During hurricane season, they were evacuated from their home several times, events that added to her mother's confusion. Respondent's father acted in desperation, by killing his wife. He believed that it was the only solution to their difficult lives.

During the weeks following her mother's death, respondent flew to Florida to bury her mother, visit her father in the hospital, and obtain legal counsel for her father's defense. The court granted respondent's request for a bond hearing. She and her brother testified at the hearing, which resulted in her father's release into her custody. Her father's health continued to fail, however. He spent the next few months being transferred

from home to the hospital, to nursing care, and back. He passed away approximately one month before his trial.

The above events traumatized respondent, her family, and her brother's family. During that time, respondent kept her office open and continued to teach, in the hopes of maintaining a semblance of normalcy for her children. Respondent needed and sought therapy. She was diagnosed with post-traumatic stress disorder ("PTSD") and placed on medical leave from her teaching position. She claimed, however, that, as a new solo practitioner, she did not know what to do about her law practice. She did not have a support system in place. She admitted that her practice suffered, but she added that she did not believe that she had taken money from clients without providing services. She acknowledged, however, that she delayed getting work done and did not document work that she did. She added that she had returned retainers, when so requested by her clients. According to respondent, she contacted the New Jersey State Bar Association Lawyers' Assistance Program for help to get her practice back on track.

Respondent's letter requested guidance in replying to the ethics charges against her.

Exhibit G to the Certification of the Record is a 2008 agreement in lieu of discipline regarding respondent's

violations of RPC 1.5(c) (failure to communicate in writing the basis or rate of the fee) and RPC 1.3 (lack of diligence), presumably in connection with another matter. The agreement recognized the mitigating circumstances described in respondent's letter and referred to other circumstances: her absence from New Jersey for considerable periods of time, her diagnosis of PTSD, her lack of the requisite experience to operate a law office, her lack of an experienced legal secretary, her seeking counseling for her emotional problems, and, to a limited extent, her request for "mentoring." The agreement listed six requirements that respondent had to satisfy within sixty days and five reports that she had to file within ninety days of the agreement, verifying her completion of the requirements. Respondent did not successfully complete the diversionary program.

Although respondent did not file a motion to vacate the default in this matter, on February 17, 2010, she submitted a letter to us to ensure that we were familiar with her mitigating circumstances. She added that, since the time of that letter, she has suffered from additional health issues, including uterine fibroids, a heart attack, and a severely broken ankle that has left her physically disabled.

Respondent acknowledged her wrongdoing, the harm it caused to her clients, and the need to address her misconduct. She further acknowledged that, although she attempted to comply with the terms of the agreement in lieu of discipline, she simply was unable to satisfy all of them. She explained that such inability did not translate into refusal to cooperate with the ethics authorities. To the contrary, she claimed that she had cooperated with the DEC to the best of her ability and hoped that we could view her failure to answer the complaint "as acceptance of responsibility for [her] actions." She added that currently she is not practicing law.

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

Respondent was charged with a pattern of neglect for her conduct in Cordero, Murcia, and the matter that was the subject of the agreement in lieu of discipline. There is no basis for such a finding. For a finding of a pattern of neglect, at least three instances of neglect must have occurred. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

Respondent was not charged with neglect, either simple or gross, in the Cordero and Murcia matters. In addition, the agreement in lieu of discipline addressed respondent's violations of RPC 1.5(c) and RPC 1.3. Like the two matters now before us, the agreement in lieu of discipline did not involve neglect, either simple or gross. Moreover, respondent did not complete the diversionary program and, therefore, the conduct that gave rise to the agreement in lieu of discipline cannot be considered as prior discipline. We, therefore, dismiss the charged violation of RPC 1.1(b).

Respondent, however, is guilty of lack of diligence in both matters. In Cordero, her failure to timely file an appeal from the denial of a waiver prevented Cordero's wife from entering the country. In Murcia, her failure to act diligently resulted in the court's issuing a preliminary injunction shutting down Murcia's business. Both clients suffered dire consequences from respondent's lack of diligence.

In both matters respondent also failed to communicate with her clients. She failed to keep them apprised of the status of their cases and failed to reply to their telephone calls. In Murcia, she also cancelled meetings with her client or failed to attend meetings that had been scheduled. She is, therefore, guilty of violating RPC 1.4(b) in both matters.

On the other hand, the complaint does not allege any facts to support a finding that respondent violated RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation) in either matter. We, therefore, dismiss this charged violation as well.

The complaint charged respondent, in the Murcia matter, with violating RPC 1.4(d) (failing to advise a client of the limitations on the lawyer's conduct, when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct), RPC 1.16(a) (failing to withdraw from or decline representation of a client when the representation will result in the violation of the Rules of Professional Conduct), and RPC 8.4(d) (conduct prejudicial to the administration of justice) for accepting representation in a jurisdiction in which she was not eligible to practice. By accepting Murcia's case and appearing in a Philadelphia court while on inactive status in Pennsylvania, respondent engaged in the unauthorized practice of law. We find that such conduct violated RPC 5.5(a)(1) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction), instead of RPC 1.4(d), RPC 1.6(a), and RPC 8.4(d). RPC 5.5(a) is the applicable rule when an attorney practices while inactive or

is ineligible to do so. Although the complaint did not specifically cite RPC 5.5(a), it alleged sufficient facts to place respondent on notice of a potential finding of a violation of that rule. Consequently, there is no due process violation in finding her guilty of the more appropriate rule for practicing law while inactive.

In sum, respondent is guilty of lack of diligence and failure to communicate with a client in both matters and the unauthorized practice of law in Murcia. We consider her misrepresentations to Cordero about the filing of his appeal and to Murcia and Murcia's former attorney that she was eligible to practice law in Pennsylvania to be aggravating factors.

The only issue left for determination is the proper quantum of discipline.

Lack of diligence and failure to communicate with a client generally result in an admonition. See, e.g., In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (in two immigration matters, attorney failed to appear at the hearings, thereby causing orders of deportation to be entered against the clients; he also failed to apprise the clients of these developments); In the Matter of Susan R. Dargay, DRB 02-276 (October 25, 2002) (attorney failed to promptly submit to the court a final judgment of divorce in one matter and failed to

reply to the client's letters and phone calls in another matter); In the Matter of Mark W. Ford, DRB 02-280 (October 22, 2002) (attorney failed to file a workers' compensation claim and to reasonably communicate with the client about the status of the case); and In the Matter of W. Randolph Kraft, DRB 01-051 (May 22, 2001) (attorney failed to prosecute a case diligently and failed to communicate with the client; the lack of communication included the attorney's failure to notify the client that the complaint had been dismissed for lack of prosecution).

Here, respondent was also guilty of practicing law in Pennsylvania while inactive. Attorneys who have been found guilty of this impropriety in Pennsylvania and who knew about their ineligibility have been reprimanded in New Jersey. See, e.g., In re Marzano, 195 N.J. 9 (2008) (motion for reciprocal discipline, following attorney's nine-month suspension in Pennsylvania; the attorney represented three clients after she was placed on inactive status in Pennsylvania); In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline, after attorney was suspended for a year and a day in Pennsylvania; the attorney represented a client in Pennsylvania when the attorney was on inactive status; although the attorney also misrepresented his status to the court, to his adversary, and to disciplinary

authorities, the attorney received only a reprimand in New Jersey because of extensive mitigation); and In re Coleman, 185 N.J. 336 (2005) (motion for reciprocal discipline, after attorney's two-year suspension in Pennsylvania; while on inactive status in Pennsylvania, the attorney practiced law for nine years, signing hundreds of pleadings and receiving in excess of \$7,000 for those services).

A comparison of respondent's conduct with that of Marzano, Davis, and Coleman show's that respondent's transgression of practicing law while inactive was not as serious as that of Marzano and Coleman. Marzano represented three clients; respondent made one court appearance on behalf of one client. Coleman practiced law for nine years, signed hundreds of pleadings, and collected more than \$7,000 for his work; respondent's conduct was not widespread, having been confined to one incident. Like Davis, respondent made misrepresentations to her client and adversary, as well as to the Court.

Attorneys who exhibit similar conduct in New Jersey, by practicing law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"), generally also receive a reprimand if, as here, the attorney knew of his or her ineligible status. See, e.g., In re Kaniper, 192 N.J. 40 (2007) (reprimand for attorney

who practiced law during two periods of ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor). But see In the Matter of Maria M. Dias, DRB 08-138 (July 29, 2008) (although attorney knew of her ineligibility, compelling mitigation warranted only an admonition; in an interview with the Office of Attorney Ethics, the attorney admitted that, while ineligible to practice law, she had appeared for other attorneys forty-eight times on a part-time, per diem basis, and in two of her own matters; the attorney was unable to afford the payment of the annual attorney assessment because of her status as a single mother of two young children).

In line with established precedent, thus, respondent should receive a reprimand for practicing while inactive, knowing that she was inactive. For her lack of diligence and failure to communicate with Cordero and Murcia, aggravated by her misrepresentation to them, the appropriate discipline should also be a reprimand.

There is one other factor to consider. Respondent defaulted in this disciplinary matter. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In re Kivler, 193 N.J. 332, 338 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

This is not to say that this holding is inflexible. When the circumstances so require, admonitions have been imposed in default matters. See, e.g., In the Matter of Donald R. Stemmer, DRB 98-394 (April 11, 2000) (attorney failed to cooperate with the DEC's investigation of a grievance, but had not acted unethically in the underlying matter); In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002) (failure to cooperate with disciplinary authorities as a result of his failure to reply to the grievance in the underlying matter); and In the Matter of Nejat Bumin, DRB 98-387 (March 25, 1999) (failure to cooperate with disciplinary authorities as a result of his failure to provide the district ethics committee with documents pertaining to his attorney bank accounts). See also In re Kearns, 179 N.J. 507 (2004) (reprimand for lack of diligence,

failure to communicate with the client, and failure to promptly pay funds to a third party based on the attorney's derelictions in the representation of clients in the refinancing of their home mortgage; specifically, the attorney failed to pay off existing mortgages timely and failed to forward closing documents to the new mortgagee timely, causing creditors to threaten his clients with foreclosure; the discipline was not elevated to the next degree because it would have been "too severe a penalty").

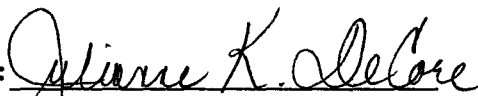
In sum, the totality of respondent's misconduct (lack of diligence and failure to communicate in both matters and unauthorized practice of law in one matter) aggravated by her misrepresentations in both matters and the default nature of this proceeding could increase the appropriate discipline to a three-month suspension. However, we find that the special, compelling mitigating factors present here - the tragic circumstances in respondent's life, for which she sought help - coupled with her lack of an ethics history, warrant the imposition of a censure, rather than a three-month suspension.

We further determine that, prior to respondent's resuming the practice of law, she should be required to provide to the Office of Attorney Ethics ("OAE") proof of fitness to practice law from an OAE-approved mental health professional and also

practice under the supervision of an OAE-approved proctor for a two-year period.

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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

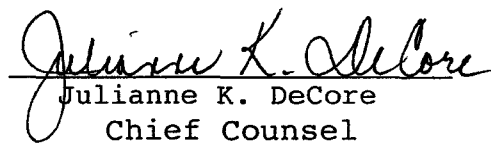
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Arleen Caballero Gonzalez
Docket No. DRB 09-396

Decided: April 20, 2010

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


Julianne K. DeCore
Chief Counsel