

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 97-292

IN THE MATTER OF :
AYSHIA Y. ARMORER, :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: October 16, 1997

Decided: February 17, 1998

Warren Jones appeared on behalf of the District IIIB 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 the Board based on a recommendation for discipline filed by the District IIIB Ethics Committee ("DEC"). The complaint charged respondent with a violation of RPC 1.1 [presumably (a) (gross neglect)], RPC 1.4 [presumably (a) (failure to communicate)], RPC 5.5(a) and R.1:21 (more properly R.1:21-1 - failure to maintain a bona fide office), and R.1:28-1 et al. (failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection).

Respondent was admitted to the New Jersey bar in 1987. She previously maintained an office in Marlton, Burlington County. As of the date of the Board hearing respondent was not practicing law. She has no history of discipline.

The facts are as follows: Carmen King retained respondent in connection with a medical malpractice suit on behalf of her daughter, Sunday Mosley. King and Mosley signed a retainer agreement with respondent on December 11, 1991. King paid respondent an initial fee of \$25.

Respondent filed a complaint in Mosley's behalf on November 18, 1993. Also on that date King gave respondent \$135 for filing fees. King had previously given respondent \$500 on November 1, 1993 for an expert's report.

On or about September 1, 1994 respondent moved her office to the Marlton location. Respondent sent King a flyer notifying her of her new office address and telephone number. Thereafter, King made numerous telephone calls to respondent at her office. Usually King left messages, which went unreturned. Letters and visits to respondent's office were also fruitless. In February 1995, after she had been unable to reach respondent, King contacted another attorney for assistance. That attorney was able to contact respondent. In or about February 1995 respondent met with King and Mosley. Respondent explained that she had had a difficult pregnancy and that her baby had health problems. King allowed respondent to continue the representation on respondent's assurance that she would be more attentive in the future.

A deposition of Mosley was conducted in March 1995. Respondent advised King that she would also need to testify at a deposition. There is some dispute in the record as to whether the date of April 27, 1995 was a definite date for King's deposition or merely tentative. Exhibit G-4, a letter from respondent to opposing counsel, lends support to respondent's contention that the date was tentative. Nevertheless, King made a number of telephone calls to respondent about the April deposition date. Those calls were not returned. King testified that she went to respondent's office

on April 27, 1995 for what she believed was the scheduled deposition. King waited approximately two and one-half hours for respondent, who never appeared.¹ King's subsequent phone messages went unanswered. In May 1995 King sent a certified letter to respondent about their lack of communication. The signature on the green return receipt card is not that of respondent. Exhibits G-6 and G-7. Respondent did not reply to that letter. She testified that she did not recall receiving it.

King's continuing lack of communication with respondent between April and August 1995 prompted King, in August 1995, to seek the assistance of another attorney. Exhibit G-8, a letter from the attorney to respondent, illustrates the difficulty he, too, encountered in communicating with respondent. Ultimately, respondent contacted the attorney and advised him that the complaint filed in Mosley's behalf had been dismissed.² Respondent agreed to turn over Mosley's file. Although there is some dispute as to whether respondent stated that King could get the file from her Marlton office, it is clear that King never received the file.

Respondent testified that the case had been dismissed on the defendant's motion for summary judgment, based on respondent's failure to supply an expert's report. Respondent stated that she had unsuccessfully opposed the motion. With regard to her failure to supply the expert's report, respondent testified that she had discussed the case with a doctor, who told her that he needed more information. For reasons that respondent could not recall, she failed to supply the

¹In her grievance, Exhibit G-9, King stated that, although she called respondent's office several times on April 27, 1995, respondent was not in. King did not mention actually going to the office.

²The record does not reveal if the complaint was dismissed with prejudice. The current status of the matter is unknown.

doctor with the information. The doctor charged respondent \$250 for the consultation. Respondent testified that, as of the DEC hearing, the remaining \$250 King had paid for the expert's report was still in her trust account, which remained open.

Respondent's answer to the ethics complaint referenced a number of attached documents, including a letter advising King of the dismissal and a motion to reinstate the complaint. King testified that respondent never advised her of the dismissal and that she never received the referenced documents. Indeed, respondent was unable to state with certainty that the documents had been sent to King.

The complaint charged respondent with failure to maintain a bona fide office. Although the details are sketchy at best, King testified that (1) respondent's office setting had three or four receptionists; no one identified herself as respondent's secretary; (2) an unidentified individual, presumably one of the receptionists, told King the place was a corporate office; and (3) respondent's personal office consisted of a desk and a chair. She did not recall if there was a telephone. King did not see any books or files in the office.

With regard to her office and her practice respondent testified that she anticipated having medical problems and that in mid-1994 she ceased taking on new cases.³ In 1995 the Mosley matter was respondent's only active case. In this regard, respondent testified, "I did not maintain a full service office in 1995, I was just participating in an incubator office, which was specifically to receive messages and in the event that anybody was attempting to communicate with me that they could do that." T47. Respondent also testified about a dispute with her landlord. She stated that,

³Respondent and her infant daughter, born in or about December 1994, had unspecified medical problems.

as a result of that dispute, she did not receive a number of messages from King; in addition, she learned in or about June 1995 that her mail was being returned to the sender. However, the record reveals that, as time passed, respondent was less attentive to her office. According to respondent, “[a]s my daughter’s health decreased my visits to the office also decreased.” T59. Respondent testified that she did not practice law in 1996. She was not practicing as of the date of the Board hearing.

The complaint charged that respondent had failed to pay the annual assessment to the New Jersey Lawyers’ Fund for Client Protection (“CPF”) for the years 1995 and 1996. Indeed, respondent has been ineligible to practice law since December 12, 1994. The report supplied to the Board by the CPF also indicates that Mosley filed a claim for \$660, the total amount paid to respondent (\$25 plus \$500 plus \$135). According to the report, Mosley’s claim is pending with the CPF.

* * *

The DEC made no factual findings. In a limited fashion the DEC found that respondent had violated RPC 1.4, RPC 5.5(a) and R.1:21 (more properly R.1:21-1). The DEC did not find clear and convincing evidence that respondent had violated RPC 1.1 or R.1:28-1. The DEC recommended that respondent be suspended for a period of six months and, as conditions for her readmission, that she return the balance of any funds being held in King’s behalf in her trust account; that she practice under the supervision of a proctor for a period of two years; and that she demonstrate her fitness to practice law, that is, both that she prove the maintenance of a bona fide office as well as the ability

to communicate with her clients. The DEC remarked that it was sympathetic to respondent's personal problems.

* * *

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

Despite its recommendation for severe discipline, the DEC was too lenient in its findings of fact. Specifically, the DEC could have found respondent guilty of gross neglect. Indeed, Mosley's complaint was dismissed for lack of an expert's report. It was respondent's fault that the report was not timely prepared. Respondent testified about unspecified illnesses suffered by herself and her daughter. If, because of a medical condition, respondent was unable to pursue Mosley's matter, then she should have withdrawn from the case. In addition, after respondent's March 1995 meeting with King during which she explained her personal problems, respondent assured King that she would be more attentive to her clients' needs. She was not, however. In short, respondent's failure to simply withdraw from this matter, allegedly her only open case, was inexcusable. Her actions clearly constituted gross neglect of Mosley's case. In addition, she failed to communicate with King, as found by the DEC.

Similarly, the DEC should have found that respondent practiced law while ineligible, in violation of R.1:28-2 and RPC 5.5(a). As noted above, respondent was ineligible to practice law as of December 12, 1994. Yet, she practiced law after that date.

The DEC found that respondent failed to maintain a bona fide office. Although the details are unclear, it appears that, at some point, respondent no longer used her Marlton office. Respondent left her clients with no way to contact her, no file and no information about the status of their case, which had been dismissed due to her inaction. Respondent's conduct in this regard violated RPC 5.5(a) and R.1:21-1.

In addition, for years respondent has been holding \$250 belonging to King, representing the unused balance of the funds paid for the expert's report. Respondent testified that the funds are still in her trust account. Nevertheless, her failure to take any steps to return those funds to King cannot be condoned.

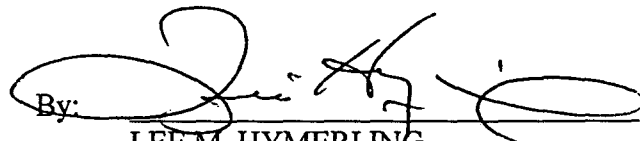
In summary, respondent was guilty of gross neglect, failure to communicate, practicing law while ineligible and failure to maintain a bona fide office. In addition, she admittedly failed to turn over King's funds to her (the \$250 remaining in respondent's trust account).

After consideration of the relevant circumstances in this case, including the medical difficulties suffered by respondent and her daughter, the Board unanimously determined that a reprimand is appropriate discipline. See In re Stalcup, 140 N.J. 622 (1995) (reprimand imposed where the attorney failed to perfect a criminal appeal, to so inform her client and to withdraw from the representation when her services were terminated. The attorney also failed to return to the client funds that had been advanced for the costs of the proceeding). In addition, the Board determined

to require respondent to practice law under the supervision of a proctor for two years, to show proof of completion of six hours of professional responsibility courses within one year and to return to King the \$250 still held in her trust account.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/17/98

By: 

LEE M. HYMERLING
CHAIR
DISCIPLINARY REVIEW BOARD

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

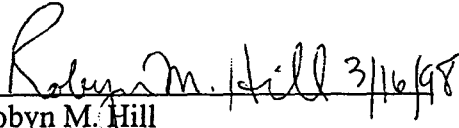
In the Matter of Ayshia Y. Armorer
Docket No. DRB 97-292

Argued: October 16, 1997

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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			X				
Zazzali			X				
Brody			X				
Cole			X				
Lolla			X				
Maudsley			X				
Peterson			X				
Schwartz			X				
Thompson			X				
Total:			9				


Robyn M. Hill
Chief Counsel