Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-330
District Docket No. XIV-2019-0478E

In the Matter of	:
Lina Marcella Franco	:
An Attorney at Law	:

Corrected Decision

Argued: April 15, 2021

Decided: August 5, 2021

Ryan J. Moriarty appeared on behalf of the Office of Attorney Ethics.

Glenn R. Reiser appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand filed by the District VB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC

3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 3.3(a)(5) (failure to disclose to a tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2014, the New York bar in 2012, and the Pennsylvania bar in 2013.[1] At the relevant times, she was a solo practitioner in New York City. She has no disciplinary history in New Jersey.

In her verified answer, respondent admitted the facts of the formal ethics complaint, with few exceptions. Respondent also admitted having violated RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d).

Respondent, however, denied having violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Prior to the commencement of the hearing, the parties jointly moved to dismiss those charges. The parties also entered into a stipulation of facts, and the hearing proceeded solely for the purpose of establishing "mitigating circumstances" and the appropriate quantum of discipline.

[1] It appears that respondent practices under the name Lina Stillman in New York and Pennsylvania but has not yet filed a Certification of Name Change for Admitted Attorneys in New Jersey. R. 1:29-2.

On May 7, 2018, the New Jersey Law Journal published an article entitled "Late-Filing Excuse Undone by Instagram Photos." The article detailed that United States Magistrate Judge Michael A. Hammer, U.S.M.J., had imposed a $10,000 sanction on respondent for her misrepresentations to the United States District Court, District of New Jersey (the DNJ), regarding the reason that she had filed a motion out of time.

In respondent's written reply to the grievance, she admitted that she had "intentionally and willfully misled the Court so that [she] could file a document," and, thus, "clearly violated the rule of candor toward the tribunal." Respondent took "**full** responsibility for [her] actions," which had "absolutely no justification" (emphasis in original).

The parties stipulated that, on July 14, 2015, Jonathan Hernandez, Esq., as local counsel for New York attorney John Troy, who had been admitted pro hac vice to the DNJ, filed a civil action captioned Siu Ching Ha, et al. v. Baumgart Cafe of Livingston, et al (the Ha matter), in that District. On February 22, 2016, respondent replaced Hernandez as Troy's local counsel.

On October 7, 2016, Magistrate Judge Hammer granted the plaintiffs' request to file a motion for conditional collective certification (the motion for certification) and set a November 23, 2016 filing deadline. Respondent did not file the motion for certification until December 9, 2016, sixteen days past the

November 23, 2016 deadline. By that point, three law firms had entered their appearances on behalf of various defendants.

Along with the motion for certification, respondent submitted a letter to Magistrate Judge Hammer, which stated, in pertinent part:

> I am writing to Your Honor today because on November 21, 2016 I was forced to leave the Country due to a family emergency in Mexico City. I have attached a copy of my itinerary as Exhibit (A).
>
> Plaintiffs were to file their motion for [certification] on that week on November 23rd but due to my family emergency, which is still ongoing, I was unable to file until today.
>
> Plaintiffs respectfully request that the Court accept our filing toady [sic] of the motion for [certification] . . . .
>
> Defense counsel has been notified of the facts above.
>
> [Ex.P10.]

Respondent attached to the letter a flight itinerary purporting to prove that she had flown from New York City to Mexico City on Thursday, November 21, 2016, and had returned to New York City on December 8, 2016.

On December 10, 2016, Troy informed Magistrate Judge Hammer that he had drafted and sent the motion for certification to respondent, on November 23, 2016, for her filing as local counsel. Troy stated that respondent had informed him, on December 8, 2016, that she had failed to

file the motion for certification due to her claimed family emergency in Mexico City.

On December 12 and 13, 2016, two of the law firms representing the defendants objected to respondent's request for an extension due to several inconsistencies contained in her request. First, respondent's itinerary identified November 21, 2016 as a Thursday, but that date was a Monday. Second, during the time that respondent claimed to be in Mexico City, her Instagram page revealed that she was in New York City and Miami. Further, respondent appeared to have been in New York City from November 6 until December 3, 2016. Finally, although respondent had been in Mexico City, that trip had taken place from late October until November 5, 2016.

On December 13, 2016, respondent withdrew the motion for certification. The next day, she wrote to Magistrate Judge Hammer that, "as a result of discussions among Counsel," she was withdrawing the motion, with prejudice. She requested that her December 9, 2016 letter be "terminated as moot." On December 14, 2016, Magistrate Judge Hammer granted respondent's request.

By way of letter dated December 23, 2016, respondent revised her position, asking Magistrate Judge Hammer to withdraw the motion for

certification, "without prejudice," and claiming that her prior request was erroneous (emphasis in original). On the same date, she filed a motion for leave to withdraw as counsel.

In the letter, respondent addressed the discrepancies regarding her family emergency in Mexico City. According to respondent, her mother's November 2016 cancer diagnosis had sent respondent "into a tailspin," which caused her to miss the motion deadline. She claimed that she had given the court an "erroneous itinerary" because she was suffering from the "emotional distraction" of her mother's diagnosis.

On December 28 and 29, 2016, counsel for all three defendants objected to respondent's request to amend the withdrawal of the motion for certification from "with prejudice" to "without prejudice," and requested that the court sanction respondent for her conduct.

On January 6, 2017, Troy moved for reconsideration of the December 14, 2016 order granting withdrawal of the motion for certification, with prejudice. As lead counsel, Troy represented that respondent had expressed the intention to withdraw the motion without his knowledge or consent and had failed to discuss withdrawal of the motion with their clients. Troy also claimed that, upon learning that respondent intended to withdraw the motion for certification, Troy contacted her and objected to her actions. Despite this

objection, respondent had represented to the court that, "as a result of discussion [sic] among Counsel," the motion would be withdrawn, with prejudice. Respondent disputed Troy's account of their interaction on this issue.

At a January 26, 2017 hearing, Judge Hammer allowed the motion for certification to proceed, over defense counsels' objection. Judge Hammer also granted respondent's motion for leave to withdraw as counsel.[2]

Judge Hammer then questioned respondent regarding the representations made in connection with her explanation of the late filing, request for an extension, and attempts to withdraw the motion with and without prejudice. Respondent admitted that she was not in Mexico City for a family emergency, as she had represented in her December 9, 2016 letter to the court. According to respondent, the family emergency existed, but she "was off on the details." She apologized for her conduct. Respondent also stated that her conduct "shows some character flaw that I need to work on. And, you know, I – we can – I can be sure that this is never going to happen again." At that hearing, Judge Hammer deferred imposing sanctions, because defense counsel had not established a legal basis for doing so.

[2] On February 13, 2017, Michael Taubenfeld, Esq. replaced respondent as local counsel in the Ha matter.

On October 2, 11, and 13, 2017, counsel for the defendants filed individual motions for sanctions and counsel fees against respondent and Troy, citing the pair's misrepresentations to the DNJ. Troy opposed the motions on the ground that respondent had acted alone in her misrepresentations and in withdrawing the motion for certification. Respondent, who denied that she had withdrawn the motion without consulting Troy, argued that sanctions were unwarranted because she had withdrawn "all misrepresentations that were made to the court when the [motion] was withdrawn with prejudice . . . well within the twenty-one (21) day safe harbor provision of Fed. R. Civ. P. 11."[3]

On April 26, 2018, Judge Hammer granted the motions for counsel fees and sanctions against respondent only. Judge Hammer ordered respondent to pay a $10,000 sanction, which was to be paid in equal portions to the three law firms. Respondent paid the sanction on May 5 and June 20, 2018.

As stated previously, based on the above facts, respondent admitted having violated RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d).

[3] Under Federal Rule of Civil Procedure 11(b)(3), an attorney who signs a pleading, motion, "or other paper" represents that, to the best of the attorney's knowledge, information, and belief, "the factual contentions have evidentiary support." Fed. R. Civ. P. 11(c)(1) permits the court to impose "an appropriate sanction" on an attorney who violates the Rule.

On February 5, 2020, the DEC heard testimony from respondent and her character witnesses, José Chinchilla and Norma Potros. Respondent testified that she represented plaintiffs in the field of employment law. She knew Troy as a friend of an unidentified former boss.

Respondent recounted that, when Troy asked respondent to serve as local counsel in the Ha matter, she saw it as an opportunity to become acquainted with the New Jersey courts and agreed. Respondent understood that she would be paid on a contingent fee basis. However, she never received a fee for her work on the Ha matter or any of the eight New Jersey cases she worked on with Troy, from 2016 to 2017, because she had withdrawn from all of them.

Respondent confirmed that Troy prepared the motion for certification. Respondent's only task was to electronically file it. According to respondent, she failed to put the filing on her calendar and, thus, "forgot about it." She claimed that Troy had sent her an e-mail, which, on the one hand, respondent claimed, "just disappeared from my inbox." On the other hand, she testified that she received the e-mail and, instead of leaving it in her inbox, she moved the e-mail "out of the inbox as if [she] had already taken care of it and never saw it."

Consistent with her claim to Judge Hammer, respondent explained that, at the time, she was "going through a rough time." Specifically, her mother had been diagnosed with cancer, and respondent was "not in a good mental place." Thus, she "wasn't keeping up with the dates of when things were due." Although respondent maintained a calendar at the time of the incident, she claimed that "it wasn't a very good one." As of her testimony, respondent maintained a "three calendar system."

On December 9, 2016, respondent realized that she had missed the deadline when Troy asked whether the motion for certification had been filed. Troy was "very, very upset" by her negative answer. For her part, respondent "kind of freaked out." She explained:

> I told him that I would take care of it and I would handle it. You know, I told him that I would take care of it. I would you know, write a letter asking the Judge to let us file it and you know. I reassured him that basically it would be okay. He was very upset. And I felt really badly. I felt really badly that I had missed the deadline. I felt embarrassed. I felt ashamed. I felt I had let him down, you know, I know – I know that I had messed up.
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> [T40 to T41.][4]

[4] "T" refers to the February 5, 2020 transcript of the disciplinary hearing.

Respondent told Troy that she would "just tell the Court that I was out of the country and hopefully they'll just let me file it." She recalled his telling her to "do whatever you need to do to make this – to get this done."

Regarding her December 9, 2016 letter to Magistrate Judge Hammer, respondent testified that, because the Ha matter was Troy's case, she "felt obligated to do something beyond just admitting that [she] was late." In retrospect, respondent observed that she should have informed Troy that she was not going to file the motion late and suggested that he hire different local counsel. In respondent's view, "it was not a good motion," although she did not believe it was frivolous.

Respondent testified that her mother had undergone cancer surgery around November 6, 2016. Prior to the operation, they visited Mexico for the purpose of taking their minds off the matter. After the surgery, respondent's mother remained hospitalized for about two weeks. Respondent visited her every day and, sometimes, spent the night with her. Although respondent kept up with business e-mails and telephone calls, "mentally, [she] was kind of checked out." When asked why she did not explain this to the court, respondent answered, "I wasn't thinking. I just – I just wasn't, you know, I wasn't thinking. I didn't take the time to think and you know, I regret that very much."

Respondent could not explain why she did not simply tell Magistrate Judge Hammer that she had missed the filing deadline other than "fear that he wouldn't take it." Instead, she "just had to come up with something that was ridiculous."

On the November 23, 2016 filing deadline, respondent was in the United States. Respondent blamed the missed deadline on a trip to Mexico City because she had just been there and her mother had been diagnosed with cancer. Indeed, according to respondent, "I just combined the two things into this lie, basically." She, thus, altered the dates on the actual itinerary, using Adobe software.

Respondent told Troy that she was going to tell the court that she had been out of the country, and he "was okay with it." She could not explain why she decided to concoct the lie. She explained:

> I don't I was just -- I freaked out I just wasn't thinking right. This is not something that I would ever do. I would never -- you know, like I said, I didn't think. I wasn't thinking. It was just a huge lapse of a momentary thing where I just felt a lot of pressure to do something. It felt like unless I say that I was somewhere else, the judge is never going to let this motion go. I could've done many things. I could've just said look I'm sorry, I'm under a lot of stress, and I couldn't file the motion. That would've been the truth, and it would've been, I'm pretty sure acceptable to the judge.

> You know, he clearly let the motion go very late. And I didn't. And for that I'm very sorry. And it's -- I'm ashamed of it. I'm embarrassed about it. And you know, I know that something like this is never going to happen. But that's -- what made me do it? Again, you know, pressure, stress, embarrassment, shame. [Troy] was a very good friend of mine and I didn't want to disappoint him. I wanted to do whatever he wanted me to do.
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> [T46 to T47.]

In her December 23, 2016 letter to Magistrate Judge Hammer, respondent admitted that she had not been candid. She continued to make excuses for herself, however – this time by telling the judge that, although the itinerary was "erroneous," she "did accurately report to the Court that it was the state of [her] mother's health and [respondent's] emotional frame of mind that first distracted [her], then drove [her] motion to extend the motion deadline nunc pro tunc." According to respondent, "this [was] also another cover-up." According to respondent, "there was no family emergency."

Respondent could not explain why, on December 23, 2016, she had not simply told the judge she had "screwed up." She wanted "to make this go away" even though her adversaries were well-aware of what she had done. Respondent now understood that, as a result of the December 9 and 23, 2016 letters, she "made this litigation more complicated for everyone . . . for no reason."

At the sanctions hearing, in January 2017, respondent apologized to everybody, including Magistrate Judge Hammer. Although she admitted that the itinerary was not correct and that she had made misrepresentations, she continued to misrepresent that there was a family emergency, "which there wasn't." Respondent would have done things differently if the same situation were to arise today. She explained:

> First of all, I wouldn't have ever made an excuse by doctoring anything and giving it to the judge. I would've accepted that I was, quite frankly, forgetful of the dates when I was supposed to file it. None of this would've happened if I had just accepted, fessed up to the fact that I wasn't – that I was in New York, as counsel had pointed out on the Instagram photos. I would've accepted responsibility then. And I would have – I would've done a lot of things different [sic] and this would have never happened.
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> [T61 to T62.]

Respondent acknowledged the "pretty egregious" nature of her conduct. She testified that she would "never, never, never again" engage in such behavior. As the result of this episode, respondent has learned "don't lie to anyone, especially a federal judge" and that she needs to "think a little longer . . . about what [she's] going to do." According to respondent, her failure to sit and think about what to do was "a character flaw" that she has been working on by taking meditation classes. In addition, since February 2018, she had been undergoing therapy.

In addition to the New Jersey Law Journal article about the incident, respondent testified that there were eight or nine other articles. She claimed to have lost business because of the publicity, and her reputation among her peers has been "substantially" affected. When former law school professors and classmates ask her about the incident, she tells them that she "lied to a federal judge" but that she is "otherwise [a] great attorney."

At that time, she "realized how insane and how egregious [her] behavior had been." When she finally told Magistrate Judge Hammer, she was "very ashamed" and "very embarrassed."

Since the incident, Troy has continued to seek respondent's assistance with other matters. She, thus, claimed that the incident did not affect him or his opinion of respondent in any way. In her opinion, Troy was not responsible for "the situation." She confessed, however, when the matter took place, she believed that "he should've taken some responsibility for what happened" because they "were together in this," but "he never did." According to respondent, Troy knew what she was going to do, although he did not know that she was going to alter the itinerary. She explained, however, that "it doesn't mean I blame him for anything." On the one hand, she conceded that Troy never indicated that she should cure the problem by lying, although "he was definitely very forceful about his desire for me to

do something." On the other hand, she noted, he certainly never said "just tell the truth." As of respondent's testimony, she did not believe that Troy should have paid any portion of the sanctions imposed by the DNJ.

From the beginning, respondent cooperated with the OAE in its investigation. In respondent's initial reply to the OAE's grievance, she accepted responsibility for her misrepresentation to Magistrate Judge Hammer and expressed contrition and remorse.

Respondent apologized to the hearing panel, acknowledging that her behavior was "egregious." She was very ashamed of what she had done, noting that she had now become one of those attorneys who has done "egregious things," which upset her.

Respondent described the pro bono legal services that she has provided over the years. Since 2013, she has been meeting with Spanish-speaking individuals at the New York City bar's bankruptcy clinic three times a month. Since 2014, she has spent Sundays volunteering at Saint Peter's Church where she assists individuals with applications for asylum, among other matters. Since 2017, she has worked with the Salvadorian community through the Salvadorian Consulate. She also serves on the board of directors of a community organization dedicated to assisting newly-

arrived immigrants. Respondent estimated that she performs more than 200 hours of pro bono services per year.

Respondent has neither altered nor been accused of altering other documents in her legal cases, and represented that this was "never going to happen again." She stated that the incident had "really brought up [sic] really bad character flaw that [she] need[s] to look at," specifically that she does not take responsibility for her actions. She continued:

> Being in front of the judge is bad, having to deal with Mr. Troy was bad. The publicity was bad. The sanctions were bad. I don't think there's been one moment. But if I take everything that's happened, it's been pretty terrible.
>
> It's a terribly [sic] thing that happened, that was all me. So I have to go back and see everything that's happened, look there's binders full of evidence and things that I've said that at the time I was in – I have to look at it and says look, I was actually trying to even make this worse instead of making it better. Something like this is just never, ever going to happen to me again, because it all starts with the lie when your mother tells you, honesty is the best policy it is. And sometimes it just takes something this big to make us -- you know, to make us realize why we shouldn't do something like this.
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> And for me, it's been many things, you know monetary reputation [sic]. But you know, I'm glad this happened. I'm glad that you know there's a system to keep us accountable for our actions.
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> [T115 to T116.]

According to respondent, the only reason she engaged in this behavior was to "get [her]self out of trouble." She "wasn't trying to screw anybody" or "hide something that was terrible." Respondent testified that she had "never dealt with the stress of being on [her] own before, and the embarrassment of having – you know, it's sort of like this idea of being perfect," and not wanting to be "found out" or to have people believe that she had flaws. Respondent now has somebody with whom she works and who "knows everything." She also has a network of attorneys who care about her "being a better lawyer."

She stated:

> You know, a lot of lessons here. . . . I've been saying it, I'm ashamed. It's a shameful thing. It's humiliating. It's embarrassing. But look I'm here, I'm willing to take my medicine. I deserve to be reprimanded. I deserve to be punished in some way.
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> [T117 to T118.]

Respondent presented character letters from eight individuals, two of whom testified in her behalf. José Vincente Chinchilla, an economist, testified that he worked as counsel for the Consulate of El Salvador in New York where he met respondent in June 2017. Chinchilla testified that respondent provided El Salvador nationals with an orientation to familiarize them with "the process." Her position required someone with "high values,

high ethics." Chinchilla knew that respondent met these requirements because "our people were constantly requesting services from her." They held her in "high esteem" and trusted her. Consulate staff also held respondent in high regard, as she was a "very great person."

Chinchilla understood that respondent had ethics charges filed against her based on her conduct in the Ha matter, including lying to a federal judge. This did not change his opinion of her, as "we are humans, and humans make errors." He still believed respondent to be "a great person," who continued to work for the Consulate "basically for no pay."

Originally, the Consulate paid respondent $2,000 monthly for her services. Chinchilla stated that the work she provided "was always a lot further beyond what she had to do." In July 2019, the Consulate was no longer able to pay respondent, "but she continued to support us in anything that we needed."

Norma Potros, an attorney licensed to practice law in New York since 2013, also testified on respondent's behalf. Potros had known respondent since 2012 when they reviewed documents for Deloitte, a prominent multinational auditing firm. They became friends, and Potros involved respondent in the pro bono work at Saint Peter's, as well as the work for the Consulate, where they worked together. Potros confirmed that the Consulate

stopped paying respondent in July 2019, yet respondent continued to provide legal services on a pro bono basis.

Potros testified that respondent was "a very ethical person" and, thus, she was surprised to learn of what had happened in 2016. She understood that respondent lied to a federal judge and doctored a flight itinerary, which she claimed was "completely out of her character." Although Potros was surprised to learn of those events, she still trusted respondent, whom she considered "very honest" and of "good moral character."

Potros believed that respondent had learned her lesson and would not repeat her misconduct. Indeed, Potros would not have believed that respondent would do such a thing in the first place.

On re-direct, respondent was questioned about the $2,000 monthly stipend that the Consulate had paid her, which she did not disclose in her reply to the grievance. Respondent explained that she believed that "low bono was enough for [the OAE] to understand that it wasn't pro bono." She defined "low bono" as "working many hours for very little money." She worked there fifteen to twenty hours per week. The DEC chair questioned respondent's testimony in which she identified the Consulate work as pro bono, asking why she did not correct the misunderstanding that it was on a

pro bono basis. Respondent answered "I apologize if I didn't. I mean it's definitely pro bono now."

The DEC accepted respondent's stipulated violations of RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 8.4(c) and RPC 8.4(d) and, thus, viewed its role as limited to determining the appropriate quantum of discipline to impose on respondent. The DEC commenced its analysis by noting that its members were "very disturbed by" respondent's misconduct.

First, following her misrepresentations to the federal court, instead of addressing the conduct, "she continued her misrepresentations, through additional written submissions and even during a hearing before the Court." Second, following the incident, respondent "did not fully take responsibility for her conduct," as demonstrated by an e-mail exchange with one of her adversaries in the Ha matter, in which she asserted that Troy had encouraged her to lie and should have been held responsible. Third, the DEC was concerned with respondent's hearing testimony in which she claimed that she had worked for the Consulate on a pro bono basis, which she was required to clarify on re-direct, after Chinchilla had testified that she was paid $2,000 per month. In this regard, the DEC noted respondent's apology for the lack of clarity.

In mitigation, the DEC noted that (1) this was respondent's first disciplinary matter; (2) respondent had already suffered negative consequences,

such as a $10,000 sanction and negative publicity; (3) she had admitted wrongdoing and expressed remorse; (4) at the time of the misconduct, "her mother had been hospitalized for several weeks with a serious health condition, and that she, as an only child, took significant care-giving responsibilities including often spending days and nights at the hospital;" (5) she has been receiving therapy to address her "character flaws," her "poor reaction to stress," and her need to take responsibility for her actions; (6) she has implemented remedial measures, such as a "three calendar system to ensure deadlines are met;" (7) she has provided pro bono and "low bono" services to Saint Peter's Church and to the Salvadorian Consulate and has served on several charitable boards; and (8) she had presented letters and testimony regarding her good character.

The DEC rejected respondent's assertion that her misconduct was mitigated by her fear that Troy would be angry or that she was not paid for her work on the Ha matter, which was ongoing.

In assessing the appropriate measure of discipline to recommend, the DEC erroneously asserted that a censure "is rare and not a sanction generally sought by the Office of Attorney Ethics or recommended by the Disciplinary Review Board." Further, the DEC observed that a reprimand "has been found to be an appropriate level of discipline in situations involving lack of candor to a tribunal

and misrepresentation." Thus, because this was respondent's first disciplinary matter and she has taken responsibility for her actions and expressed remorse, the DEC recommended a reprimand.

At oral argument before us, the OAE sought imposition of a reprimand or censure, relying on its March 10, 2020 letter brief to the DEC hearing panel, as well as the DEC's hearing panel report. In the March 2020 letter brief, the OAE argued that respondent's conduct was similar to that of the attorney in In re Monahan, 201 N.J. 2 (2010), who, in seeking to extend the time within which to file an appeal, submitted to the court two certifications falsely asserting that he had been too ill to file the appeal. According to the OAE, although respondent did not submit false certifications, both she and Monahan had created a false or misleading document to conceal having missed a deadline. Further, Monahan, who received a censure, had benefited from only one mitigating factor, his unblemished disciplinary history, whereas respondent's mitigating factors were "far more significant."

The OAE distinguished respondent's conduct from that of the attorney in In re Giscombe, 173 N.J. 174 (2002), who received a three-month suspension for submitting false affidavits on behalf of herself and her client in support of a motion for leave to file a notice of claim nearly a year after the injury and nine months after she was retained. According to the OAE, when respondent was

confronted with her misrepresentations in this case, she "did not take the same denial position" as did Giscombe. Further, Giscombe had a disciplinary history, whereas respondent does not.

Finally, the OAE noted that suspensions are ordinarily imposed on attorneys who make misrepresentations under oath, citing, by way of example, In re Perez, 193 N.J. 483 (2008); In re Chasar, 182 N.J. 459 (2005); and In re Brown, 144 N.J. 580 (1996). The OAE emphasized that respondent's misrepresentations were not made under oath.

In respondent's March 17, 2021 letter brief to us, she argued for the imposition of a reprimand, emphasizing her proffered mitigation, including the lack of harm to the plaintiffs, and citing several cases in which attorneys received reprimands for misrepresentations to courts.

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

RPC 3.3(a)(1) prohibits a lawyer from knowingly making a false statement of material fact or law to a tribunal. Respondent violated this Rule when she misrepresented to the federal court that she had missed the deadline for filing the motion for certification due to a family emergency that forced her to leave the country. She violated the RPC again when she claimed that, prior to

withdrawing the motion, with prejudice, she had discussed doing so with counsel, which included Troy.

Respondent's failure to correct her misrepresentations was a violation of RPC 3.3(a)(5), which prohibits an attorney from failing to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal. See, e.g., In re Mueller, ___ N.J. ___ (2019), and In re Chirico, ___ N.J. ___ (2019) (companion cases) (Chirico violated RPC 3.3(a)(1), RPC 3.3(a)(5), and RPC 8.4(c) and (d), by falsely denying to a judge that he had referred a client to Mueller, who had a conflict of interest, and then failing to correct the misrepresentation; the conduct also violated RPC 8.4(c) and (d); three-month suspension imposed on Chirico; reprimand imposed on Mueller). As respondent testified, she permitted Judge Hammer to continue under the false impression that she was involved in an ongoing family emergency until the January 2017 hearing.

In addition to RPC 3.3(a)(1) and (5), respondent's layered misrepresentations to the federal court, including her alteration of the itinerary, violated RPC 8.4(c).

Finally, respondent violated RPC 8.4(d). Her misrepresentations about the reason for missing the deadline to file the motion for certification, and her subsequent withdrawal of the motion, first with and then without prejudice, led

to hearings and required Magistrate Judge Hammer and the parties to devote time and resources to issues that never should have arisen. More seriously, her false claim that she had discussed withdrawal of the motion for certification with Troy, rendering him a target in defense counsels' quest for sanctions, forced Troy to defend his reputation, at the expense of Troy's time and resources.

In sum, we find that respondent violated RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Although the discipline imposed on attorneys who make misrepresentations to a court or exhibit a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension, this particular case required us to discern whether a reprimand or a censure was the more appropriate discipline. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Schiff, 217 N.J. 524 (2014)

(reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for default judgments, at the attorney's direction, they completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); In re McLaughlin, 179 N.J. 314 (2004) (reprimand imposed on attorney, who had been required by the New Jersey Board of Bar Examiners to submit quarterly certifications attesting to his abstinence from alcohol, but falsely reported that he had been alcohol free during a period within which he had been convicted of driving while intoxicated, a violation of RPC 8.4(c); in mitigation, after the false certification was submitted, the attorney sought the advice of counsel, came forward, and admitted his transgressions); In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate a complaint, as to the date the attorney learned of the dismissal of the complaint, a violation of RPC 3.3(a)(1) and RPC 8.4(c); the

attorney also lacked diligence in the case, failed to expedite litigation, and failed to properly communicate with the client; prior reprimand; in mitigation, we considered that the conduct in both matters had occurred during the same time frame and that the misconduct in the second matter may have resulted from the attorney's poor office procedures); In re Bakhos, 239 N.J. 526 (2019) (censure imposed on attorney who, in one of three client matters, violated RPC 3.3(a)(1) and RPC 3.3(a)(5) by misrepresenting to the court that he had authority from his client to resolve the litigation by dismissing it and submitting the matter to binding arbitration, and by failing to notify the court and his adversaries that he did not have such authority; these false statements to the court, along with his misrepresentations to his supervising attorney, also violated RPC 8.4(c); the attorney's misrepresentation to the court resulted in the cancellation of a scheduled jury trial and dismissal of a medical malpractice case in favor of binding arbitration and, thus, constituted a violation of RPC 8.4(d); in another client matter, the attorney falsely represented to the court that he was still working with his client on finalizing his client's discovery responses, even though he had not even made his client aware of the pending requests, in violation of RPC 3.3(a)(1) and RPC 8.4(c); further, he wasted judicial resources, in violation of RPC 8.4(d), by his failure to comply with discovery, even in the face of court orders that he do so, resulting in the striking of his client's answer

and the entry of a default against his client, along with the subsequent motions to vacate that default; the attorney also exhibited gross neglect, a pattern of neglect, and lack of diligence, and failed to communicate with the client in three matters; in mitigation, once the attorney's house of cards crumbled, he acknowledged his wrongdoing, worked toward alleviating any damage to his clients, including certifying to the court his improprieties, and fully cooperated with disciplinary authorities; he also sought treatment to better handle anxiety, was confident that he would not repeat his misconduct, and had no history of discipline); In re Myerowitz, 235 N.J. 416 (2018) (censure imposed on attorney who lied to the court on at least two occasions regarding the reasons for needing an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers, thus causing delays and wasting judicial resources; violations of RPC 3.3(a)(1) and RPC 8.4(c) and (d); the attorney also failed to reply to an order to show cause, in violation of RPC 3.4(c)); In re Duke, 207 N.J. 37 (2011) (censure imposed on attorney who failed to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); and In re Monahan, 201 N.J. 2 (2010)

(attorney censured for submitting two false certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible).

In our view, a reprimand would be insufficient to address respondent's misconduct. The false documents submitted by the attorneys in Marraccini and Schiff were born of an effort to short-cut their work rather than to mislead. The attorney in McLaughlin, whose misrepresentation was to the Board of Bar Examiners, confessed almost immediately after doing so rather than doubling down and wasting judicial resources, as did respondent here. Finally, the depth of respondent's deceit far exceeded that of the attorney in Manns.

The OAE cited other reprimand cases: In re Kantor, 165 N.J. 572 (2000) (attorney appeared in municipal court on a charge of driving without automobile insurance and falsely stated that he did have automobile insurance); In re Salerno, 152 N.J. 431 (1998) (attorney falsely certified to the OAE that he had corrected recordkeeping deficiencies); and In re Mazeau, 122 N.J. 244 (1991) (attorney failed to disclose that he had previously represented his client in respect of the same tort claim when she was a minor). They, too, are

inapplicable. Again, unlike respondent, Kantor, Salerno, and Mazeau did not double down on their lies. Finally, none of the attorneys in any of the above cases altered a document for the purpose of "substantiating" their lies.

We find this case to be most similar to Myerowitz and Monahan, in which the attorneys received censures. In both cases, the attorneys lied to cover-up their failure to comply with deadlines and other obligations. In Monahan, for example, the attorney failed to meet a January 10, 2005 deadline for filing a notice of appeal after a bench trial decision. In the Matter of Thomas P. Monahan, DRB 09-039 (September 15, 2009) (slip op. at 4).

On January 20, 2005, Monahan filed a motion to extend the time to file an appeal. Ibid. In support of the motion, he submitted a certification, stating that, on January 3, 2005, he was diagnosed with severe pneumonia and placed on bed rest for a week and a half. Id. at 4-5. He returned to work on January 14, 2005. Id. at 5. Monahan claimed that, prior to his diagnosis, he had prepared the notice of appeal and that, while he was home sick, the notice had been sent to the court. Ibid. It was not, however, and he did not learn of the oversight until January 14, 2004. Ibid.

Contrary to the certification, between January 4 and 13, 2005, Monahan had "performed substantial work on, and billed substantial time to, various client matters," including the case in which the notice of appeal was to be filed. Ibid.

He also made four court appearances, attended four client meetings out of the office, and participated in two meetings at his firm's office. Id. at 6. Indeed, on January 10, 2005, Monahan billed one hour for finalizing the notice of appeal and forwarding it to the court. Ibid. He mistakenly believed that it had been filed. Id. at 11.

In a reply certification, Monahan stated, among other things, that he did not know that he would be so affected during the time that he was ill. Id. at 7. Notably, he did not mention the time that he devoted to preparing the notice of appeal on the date that it was due to be filed. Id. at 8.

According to Monahan, by stating in the certification that he was not in the office, he intended to convey that he was not in the office every day in the usual sense. Id. at 16. Monahan described the certification as "sloppy," explaining that, at the time, he had moved "too quickly," that he had "made a mistake," and that he "should have taken more care." Id. at 12. He also was under "a lot of stress" at the time. Id. at 14. In mitigation, Monahan had practiced law for more than twenty years without incident. Id. at 29.

In Myerowitz, a case strikingly similar to the matter before us, the attorney was sanctioned $10,000 for lying to a court on at least two occasions regarding the reasons for needing an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers,

violations of RPC 3.3(a)(1) and RPC 8.4(c). In the Matter of Howard Z. Myerowitz, DRB 17-312 (April 24, 2018) (slip op. at 3-5, 19). The attorney's misrepresentations included a "copy-and-paste[d] typographical error." Id. at 5. The attorney's actions, which resulted in two sanctions hearings, delayed the litigation and wasted judicial resources, in violation of RPC 8.4(d). Id. at 6-7.

Like respondent, the attorney "accepted 'full responsibility' for the incident and claimed to be 'shamed and mortified.'" Id. at 5-6. In mitigation, he had no history of discipline. Id. at 26.

We further weigh the gravity of respondent's misconduct, the extensive waste of judicial resources that ensued, and the impact on local counsel Troy, who was required to defend against the motions for sanctions that resulted from respondent's misconduct.

Even though he was not required to pay sanctions, Troy was the subject of the motions seeking sanctions and, thus, was required to defend against them. Although respondent testified that she does not believe that Troy was responsible in any way for her conduct, she did not appear to be remorseful that she had ensnared him in the motion for sanctions. We, thus, weigh the unnecessary harm to Troy in further aggravation.

Moreover, we are troubled by our continuing doubts about respondent's candor. During her testimony, she was not completely forthcoming regarding

remuneration received for her work for the Salvadorian Consulate. She initially testified that her work for the diplomatic agency was pro bono, which was not the full truth. As Chinchilla subsequently testified, for more than two years, from June 2017 through July 2019, the Consulate had paid respondent $2,000 a month. Yet, she initially failed to offer that in her testimony, stating only that she had provided pro bono services there. Indeed, her services were provided on a pro bono basis only for the previous seven months.

In mitigation, respondent has demonstrated an extraordinary commitment to the Hispanic immigrant community, which has benefited greatly from her legal knowledge and services, including pro bono representation. This mitigation tempers the adverse impact that her conduct had on Troy. In addition, her contrition and remorse are plainly evident in the record.

On balance, we determine that a censure is the quantum of discipline required to adequately protect the public and preserve public confidence in the bar.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Lina Marcella Franco
Docket No. DRB 20-330

Argued: April 15, 2021

Decided: August 5, 2021

Disposition: Censure

Members	Censure	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel