

Matter of Rodriguez
Del. Supr. No. 386, 2001 (3/14/02)
Board Case Nos. 3, 30, 31, 32, 65, 1996; 38, 39, 40, 41, 81, 1997; 2, 1998

Disciplinary Rules: DLRPC 1.3, 1.4(a), 1.5(a), 1.15(d), 1.16(d),
8.4(b), 8.4(c), 8.4(d)

Sanctions Imposed: Four-Year Suspension (effective date of sanction 4/16/96)

By Order dated March 14, 2002, the Delaware Supreme Court approved the findings and recommendations of the Board on Professional Responsibility (the “Board”), and ordered that Elizabeth K. Rodriguez, a member of the bar since 1985, be suspended from the practice of law for a period of four years. This suspension was effective April 16, 1996.

Ms. Rodriguez was admitted to the Bar of the Supreme Court of Delaware (“Court”) in 1985. From September 1992 through April 1996, Ms. Rodriguez was a solo practitioner with a law office in Georgetown, Delaware. By Order dated April 16, 1996, the Court placed Ms. Rodriguez on disability inactive status “due to a severe cocaine addiction” during the pendency of many of these early Board matters. By order the same date, the Court of Chancery appointed a Receiver for Ms. Rodriguez’ law practice. By Order dated July 16, 1997, Ms. Rodriguez was suspended from the practice of law on an interim basis pending the resolution of the disciplinary matters pending against her. Ten Board matters (all 1996 and 1997 Board Cases listed above) were heard by a panel of the Board on Professional Responsibility (“Board”) at a hearing on September 12, 1997. Prior to the Court’s consideration of the Board’s Report and Recommendation in those matters, Ms. Rodriguez was arrested on drug-related charges. By Order dated January 23, 1998 the Court placed Ms. Rodriguez on Supplemental Interim Suspension and remanded the ten Board cases for further Board hearing. Ms. Rodriguez petitioned the Court for reinstatement to the active practice of law on April 8, 1999; however, as there were pending disciplinary matters before the Board, the Court stayed this petition pending the resolution of those matters.

The sanction of suspension was imposed on Ms. Rodriguez based on her ethical misconduct in violation of twenty-two Rules of the Delaware Lawyers’ Rules of Professional Conduct (the “Rules”): four counts of violating Rule 1.3 (failure to diligently represent clients); four counts of violating Rule 1.4(a) (failure to promptly respond to clients and keep them reasonably informed of the status of their matters); seven counts of violating Rule 1.5(a) (failure to charge a reasonable fee); Rule 1.15(d) (failure to adequately maintain law office books and records); Rule 1.16(d) (failure to protect client interests upon termination of

representation); 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); two counts of violating Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and two counts of violating Rule 8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

During the course of representing her clients, the Court found that Ms. Rodriguez consistently failed to act with diligence and promptness on her clients' behalf; she failed to promptly respond to requests for information and to communicate the status of matters to her clients; she accepted fees for legal work which she ultimately was unable to provide; she engaged in dishonest conduct in representing a client by directing him to sign several blank affidavit forms to be used in litigation; and she failed to protect a client's interests upon termination of the representation. Furthermore, she failed to maintain her books and records in compliance with the Rules, which resulted in her books having to be reconstructed by an accounting firm engaged by the Receiver of her law practice; she misrepresented to the auditor the existence of these books and records; and she failed to appear in scheduled matters before the Family Court. These violations were found to have occurred during a period of active drug addiction.

During the pendency of ten Board matters (1996 and 1997), Ms. Rodriguez was arrested on drug-related charges. This resulted in the Supplemental Interim Suspension and further Board hearings on all Board cases. Ms. Rodriguez sought substance abuse counseling. In April 1998, she entered into a Substance Abuse Recovery Agreement ("Agreement") with the Office of Disciplinary Counsel ("ODC"). The Agreement required that Ms. Rodriguez remain abstinent from all alcohol and illegal mind-altering drugs; work with an Alcoholics Anonymous or Narcotics Anonymous sponsor; attend at least five recovery program meetings per week during the first year of the Agreement; comply with random drug screens at least twice per month; undergo a psychological evaluation and comply with any treatment program recommended; and provide monthly reports of compliance to ODC. Pursuant to the Agreement, Ms. Rodriguez was assigned an individual, who is a member of the Lawyers' Assistance Committee of the Delaware Bar Association ("LAC"), to monitor her compliance with the Agreement and report to the ODC. This Monitor provided monthly reports to ODC concerning Ms. Rodriguez' compliance with the Agreement. In addition to the Rules' violations concerning her duties to her clients and her profession, the Board report issued on June 6, 2000 found that Ms. Rodriguez had engaged in additional misconduct, specifically criminal conduct in violation of Rule 8.4(b). Furthermore, the Board found that Ms. Rodriguez remained in compliance with the terms of the Agreement. The Court approved the Board's finding that Ms. Rodriguez' criminal conduct in January 1998 was in violation of Rule 8.4(b); however, this conduct was determined to be a "slip" into her addiction and "did not represent a moral failing."

In determining that Ms. Rodriguez' conduct warranted suspension, the Court

considered that she had engaged in a pattern of misconduct as it related to her handling of client matters; committed multiple violations of the Rules; engaged in illegal conduct; and had engaged in further misconduct during the pendency of the disciplinary matters already before the Board. The Court considered the following factors in mitigation of a harsher sanction. Ms. Rodriguez lacked a dishonest or selfish motive. She cooperated with the disciplinary process, including her ongoing compliance with the terms of the Agreement. Ms. Rodriguez suffers from the disease of addiction; this addiction was the major cause of her misconduct; she is in recovery from this addiction, which she has demonstrated by a meaningful and sustained period of successful rehabilitation (ongoing compliance with her LAC Monitor and the Agreement); her efforts at recovery have arrested the misconduct and recurrence of that misconduct is unlikely so long as she remains active in her recovery.

All disciplinary matters having now been finally resolved by the Court, the Petition for Reinstatement has been remanded to the Board for a full hearing. ANY COMMENTS REGARDING MS. RODRIGUEZ' PETITION FOR REINSTATEMENT SHOULD BE DIRECTED TO THE OFFICE OF DISCIPLINARY COUNSEL BY NO LATER THAN APRIL 30, 2002.