DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
TERRI Y. LEA,	:	D.C. App. No. 08-BG-964
	:	Bar Docket No. 323-07
Respondent.	:	
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 422762)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent currently is suspended from the practice of law in the District of Columbia with a fitness requirement by virtue of an order of the Court entered on April 23, 2009 in *In re Lea*, 969 A.2d 881 (D.C. 2009) ("*Lea I*"). Less than two months after that order, on June 11, 2009, an Ad Hoc Hearing Committee (the "Committee") issued a report (the "HC Rep.") finding that Respondent violated D.C. Bar. R. XI, § 2(b)(3) (failure to comply with Board order) and the following District of Columbia Rules of Professional Conduct:

1. 5.5(a) (unauthorized practice of law);
2. 7.1 (making a false or misleading communication about the lawyer or her services);
3. 7.5 (using a letterhead or other professional designation that violates Rule 7.1);
4. 8.1(b) (failure to respond to Bar Counsel's lawful demand for information);
5. 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and
6. 8.4(d) (conduct that seriously interferes with the administration of justice).

Based on these findings, the Committee recommended that Respondent be suspended for 180 days "in addition and consecutive to the period of suspension imposed by the District of

Columbia Court of Appeals in *Lea I*," with a requirement that her reinstatement be conditioned on her showing "that [she] has fully and promptly responded to the ethical complaints in the instant matter." HC Rep. p. 31.[1]

We have reviewed the Committee's report, to which neither Bar Counsel nor Respondent has taken exception. We concur with the Committee's conclusion that Respondent violated the above-stated disciplinary rules and D.C. Bar R. XI, § 2(b)(3), and with its recommendation that she be suspended for 180 days in addition and consecutive to the period of suspension imposed in *Lea I*. However, since the Court's acceptance of that recommendation would adjudicate the ethical complaints in this matter, we do not believe a requirement that Respondent make a response to those complaints is necessary.

FINDINGS OF FACT

We adopt the Committee's detailed findings of fact (*see* HC Rep. pp. 7-16) as supported by the substantial evidence in the record as a whole, but a brief summary of the salient facts suffices for purposes of this report and recommendation.

A. Respondent's Unauthorized Practice of Law and Dishonesty

Respondent's membership in the District of Columbia Bar was administratively suspended on September 30, 2003 for non-payment of dues and has not since been reinstated. FF ¶ 3; BX 2[2] (Affidavit of Karen V. Wiggins, manager of the Member Service Center of the

[1] The Committee considered recommending a fitness requirement in this matter, but after its review of the case law "on whether it is appropriate to recommend imposing a fitness requirement on an attorney who is already subject to" a fitness requirement in a previous case, it followed the course adopted by the Board in *In re Steinberg*, Bar Docket No. 423-01 at 29 n.13 (BPR May 2, 2005). HC Rep. pp. 28-30. The Committee thus did not recommend a fitness requirement in this matter, but wrote that, "if a fitness requirement had not been imposed in *Lea I*, [it] would have recommended such a requirement in this matter" and put Respondent on notice that the misconduct in this matter must be addressed in any petition for her reinstatement. *Id*. at 30-31.

[2] As used herein, "FF" refers to the Committee's findings of fact; "BX" refers to Bar Counsel's exhibits; "HCX" refers to the Committee's exhibits; and "Tr." refers to the transcript of the hearing held on February 9, 2009.

District of Columbia Bar), p. 5, ¶ 3h.[3] On October 13, 2006, however, she left a telephone message with a GEICO claims representative saying that she "represented claimant Kelvin Ross regarding an accident that occurred on October 5, 2006." FF ¶ 6; BX 3 (Affidavit of John Kopcak, a claims representative of GEICO Insurance Company), p. 13.

Respondent and the claims representative thereafter talked by telephone on eleven occasions during which Respondent "gave [the claims representative] the impression that she was an attorney, licensed to practice law." FF ¶¶ 6-7; BX 3 p. 14. "During one or more conversations, [she] referred to the amount of funds she believed a District of Columbia jury would authorize if she had to sue GEICO on behalf of her client." FF ¶ 7; BX 3 p. 14. What is more, on May 29, 2007, Respondent sent GEICO a formal demand letter under a letterhead identifying herself as "Terri Y. Lea, Esquire" with an address at "4607 Connecticut Avenue, Northwest, Suite 805, Washington, The District of Columbia 20008." FF ¶ 5; BX 3 p. 16. In the letter, Respondent asserted that "my client, Kelvin Ross . . . suffered severe physical injury and endured significant pain and suffering as the direct result of [GEICO's] insured's negligent operation of a motor vehicle on October 5, 2006" and demanded $23,788.71 "as settlement of all claims [her] client presently maintains against [GEICO's] insured." FF ¶ 5; BX 3 pp. 16-17. The letter's signature line read "Terri Y. Lea, Esq." FF ¶ 5; BX 3 p. 17.

B. Respondent's Failure to Respond to Bar Counsel's Demand and Board Order

GEICO thereafter learned that Respondent was suspended from the practice of law and brought her conduct to the attention of Bar Counsel. FF ¶¶ 9-10; BX 1 (Letter from GEICO to

[3] BX 2 establishes that Respondent was suspended on September 30, 2003 and that, as of the date BX 2 was executed (March 19, 2008), she had not applied for reinstatement to the Bar. BX 2 p. 5, ¶ 3h. As we note above, Respondent currently is under a disciplinary suspension with requirements that she both "prove fitness pursuant to D.C. Bar Rule XI, § 3(a)(2) and . . . respond promptly to the inquiries of Bar Counsel and the Order of the Board pertaining to the underlying disciplinary proceeding against her." *Lea I*, 969 A.2d at 894. The Board's records do not show that she has fulfilled either condition.

Office of Bar Counsel), p. 1. Bar Counsel's investigator got in touch with Respondent by calling the telephone number listed on the letter Respondent had sent to GEICO. FF ¶ 11; BX 4. After the investigator's telephone conversation with Respondent on September 11, 2007, in which Respondent confirmed the address on the GEICO letter as her current address, the Office of Bar Counsel sent letters to her on September 12 and October 3, 2007. FF ¶¶ 12-13; BX 4; BX 5; BX 9 ¶ 3. The letters asked Respondent to provide a "written response . . . to each allegation of misconduct" and specifically, to "explain why you are engaging in the practice of law when our records indicate that you were suspended from the practice of law in the District of Columbia for nonpayment of your bar dues on September 30, 2003." FF ¶¶ 12-13; BX 5 p. 22; *see also* BX 6 (Motion of Bar Counsel to Compel Response to Complaint), pp. 25-27.

Respondent did not respond to either letter. On October 22, 2007, Dolores Dorsainvil, Staff Attorney in the Office of Bar Counsel, personally spoke on the telephone with Respondent. FF ¶ 14; BX 10 (Affidavit of Dolores Dorsainvil), ¶ 7; Tr. 21-23. Respondent said that she had received the letters, but had not yet had time to respond. She requested an extension until November 15, 2007. The extension was granted, but Respondent nonetheless made no response to the September 12 and October 3 letters. FF ¶ 14; BX 9 ¶¶ 2-3. Consequently, Bar Counsel on November 20, 2007, filed a motion with the Board seeking "an order requiring Respondent to respond to the complaint in the above captioned disciplinary matter." FF ¶ 15; BX 6. Respondent filed no response to the motion. FF ¶ 2d; BX 9 ¶ 4. The Board entered the requested order on December 5, 2007. FF ¶ 16; BX 7. Respondent did not comply with the order. FF ¶ 17; BX 9 ¶ 5.

C. Service of Respondent with Specification of Charges

After Respondent's successive failures to provide Bar Counsel with any written response to (a) the ethical complaint that GEICO had made against her, (b) Bar Counsel's motion, or (c) the Board's order, Bar Counsel instituted this proceeding on June 19, 2008. Unsuccessful attempts to serve Respondent personally with the Petition and Specification of Charges were attempted at (i) the Washington, D.C. address on the letterhead that Respondent sent to GEICO, FF ¶ 2a; HCX 3 p. 2, (ii) an address in Monessen, Pennsylvania that was the address of Respondent's mother, at which Respondent "had informed Bar Counsel in her other matter [*Lea I*], that she reliably receives mail," *id*., and (iii) at a Washington, D.C. address discovered by Bar Counsel's process server as a "possible address for Respondent." *Id*. Bar Counsel then filed with the Court a motion to serve Bar Counsel's Specification of Charges by alternative means. HCX 3; *see* FF ¶ 2g. The Court granted that motion on August 27, 2008, and Respondent was served in the manner specified in the Court's order. FF ¶ 2b; BX C.

ANALYSIS

Disciplinary Rule 5.5(a)

District of Columbia Rule of Professional Conduct 5.5(a) prohibits a lawyer from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." The District of Columbia is the jurisdiction in which Respondent sent GEICO a formal written demand on letterhead stationery that identified her as "Terri Y. Lea, Esquire" at a District of Columbia address. That demand letter, signed as "Terri Y. Lea, Esq." and expressly sent on behalf of "my client, Kelvin Ross," was sent in the course of her negotiations by telephone with a GEICO claims representative. During those negotiations, Respondent gave the representative "the impression that she was an attorney, licensed to practice

law, and representing her client." FF ¶¶ 6-7; BX 3 p. 14. In one or more of the conversations, she "referred to the amount of funds she believed a District of Columbia jury would authorize if she had to sue GEICO on behalf of her client." FF ¶ 7; BX 3 p. 14

The Rules Governing the District of Columbia Bar provide that "[e]very member shall pay dues in an amount not to exceed a ceiling set by the District of Columbia Court of Appeals." D.C. Bar R. II, § 5. Moreover, the membership of any member whose dues "remain unpaid at the expiration of 90 days from the time when such dues are due and payable . . . may be suspended" and "[n]o person whose membership is so suspended for nonpayment of dues shall be entitled to practice law in the District of Columbia during the period of such suspension." *Id*. § 6.

Respondent's negotiations with GEICO on behalf of her "client" and her letter to the GEICO claims representative fall squarely within the practice of law as defined in Rule 49 of the General Rules of the District of Columbia Court of Appeals. With exceptions that are not pertinent here, that rule provides that "[n]o person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the District of Columbia Bar . . . ." D.C. App. Rule 49(a) (revised and effective January 2, 2004).[4] Rule 49's definition of "[h]old out as authorized or competent to practice law in the District of Columbia" is "to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the District of Columbia." D.C. App. Rule 49(b)(4) (revised and effective January 2, 2004). The definition specifically identifies "Esq." as being "[a]mong the characterizations which give such an indication." *Id.*; *see also In re Soininen*, 853 A.2d 712, 717

[4] The Court's rules, including Rule 49, were revised again in March 2008, but those revisions did not affect the provisions of subdivisions (a) and (b) of the rule that are pertinent to this matter.

(D.C. 2004); *Brookens v. Comm. on Unauth. Practice of Law*, 538 A.2d 1120, 1122 n.6 (D.C. 1988).

Respondent thus, by her conduct and the contents of her demand letter, held herself out as authorized to practice law in the District of Columbia during the entire period of her negotiations with GEICO on behalf of someone she identified as her "client" (October 2006 through August 2007). Since she was suspended for nonpayment of dues during the period from October 2006 through August 2007 and thus was not "entitled to practice law in the District of Columbia," she was practicing law in violation of D.C. Bar R. II, § 6. Accordingly, she violated Disciplinary Rule 5.5(a).[5]

Disciplinary Rules 7.1, 7.5 and 8.4(c)

Rules 7.1, 7.5 and 8.4(c), each in its own way, target deceptive practices of lawyers. Rule 7.1 provides that a "lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." Rule 7.5 focuses narrowly on the lawyer's "firm name, letterhead, or other professional designation" and prohibits the use of any of those means of identification "that violates Rule 7.1." Rule 8.4(c) broadly declares it "professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." As discussed above, Respondent, by her demand letter with a letterhead identifying her as "Terri Y. Lea, Esquire" and her conduct and representations during negotiations with GEICO's claims representative (*see supra*, p. 3), held herself out as a lawyer who was authorized to practice law in the District of Columbia, when in fact she was suspended

[5] Should Respondent engage in the unauthorized practice of law in the District of Columbia during the period of her disciplinary suspension by the Court, she will be subject not only to further disciplinary proceedings for the unauthorized practice of law, but to contempt proceedings for violation of the Court's disciplinary orders. *See Lea I; see also In re Burton*, 614 A.2d 46, 49 (D.C. 1992); *In re Ryan*, 823 A.2d 509 (D.C. 2003); *In re Marshall*, D.C.C.A. No 07-SP-146 (D.C. Jan. 26, 2009).

from the practice of law and thus not so authorized. Accordingly, she violated those three disciplinary rules.

Disciplinary Rule 8.1(b)

The provision in Rule 8.1(b) involved in this case makes it a violation for "a lawyer in connection with . . . a disciplinary matter" to "knowingly fail to respond reasonably to a lawful demand for information from [a] . . . disciplinary authority . . . ." Bar Counsel sent letters to Respondent requesting a written response to the complaint filed against her on September 12, 2007 and again on October 3, 2007. At least by October 22, 2007, Respondent was aware that Bar Counsel was seeking that information. In a telephone conversation with a Bar Counsel Staff Attorney on that day, Respondent acknowledged her receipt of the letters and requested an extension until November 15, 2007 to respond. That request was granted, but Respondent has made no response to the September 12 and October 3 letters. The letters were lawful demands for information from Bar Counsel, a disciplinary authority.

In a motion filed with the Board on November 20, 2007 seeking an order compelling a response to its requests for information, Bar Counsel identified and attached a copy of the complaint against Respondent he had received from GEICO. BX 6 ¶ 1 (Attachment A). The motion asked the Board to "enter an order directing Respondent to respond to Bar Counsel's written inquiries." BX 6 p. 27. The Board granted that motion and on December 5, 2007 issued an order directing Respondent to "provide to Bar Counsel a response to each allegation of the complaint within ten (10) calendar days of the date of this Order." BX 7. Respondent's knowing failure to provide the information demanded by Bar Counsel, after issuance of the Board's order, was a violation of Rule 8.1(b). *See In re Kanu*, Bar Docket Nos. 130-05, *et al*.

(BPR Oct. 30, 2008) (pending exception) (Bar Counsel must obtain an order of the Board before it proceeds against a Respondent for failing to respond).

D.C. Bar R. XI, § 2(b)(3)

An attorney's "failure to comply with any order of . . . the Board issued pursuant to" D.C. Bar. R. XI is "grounds for discipline" in the District of Columbia. *See, e.g., In re Artis*, 883 A.2d 85 (D.C. 2005); *In re Beaman*, 775 A.2d 1063 (D.C. 2001) (per curiam); *In re Giles*, 741 A.2d 1062 (D.C. 1999) (per curiam). As discussed above, Respondent failed to comply with an order of the Board issued on December 5, 2007, compelling a response to Bar Counsel's inquiries. Respondent's failure to comply with that order was a violation of D.C. Bar R. XI, § 2(b)(3).

Disciplinary Rule 8.4(d)

Lawyers are prohibited, by Rule 8.4(d), from "engag[ing] in conduct that seriously interferes with the administration of justice." Bar Counsel explicitly warned Respondent, in two letters, "that the District of Columbia Court of Appeals has approved discipline based in part on a violation of Rule 8.4(d) . . . where the attorney failed to comply with Bar Counsel's request for information." BX 5. Respondent nonetheless did not provide Bar Counsel with a response to its inquiries, even after the issuance of an order of the Board compelling a response.

The Board has frequently found Rule 8.4(d) violations in failure to respond cases and recommended short-term suspensions, which the Court has accepted. *See, e.g., Artis*, 883 A.2d 85 (30-day suspension); *In re Beller* ("*Beller I*"), 802 A.2d 340 (D.C. 2002) (per curiam) (same); *Beaman*, 775 A.2d 1063 (same); *In re Steinberg*, 761 A.2d 279 (D.C. 2000) (per curiam) (same); *In re Lilly*, 699 A.2d 1135 (D.C. 1997) (per curiam) (same). As the Board report stated in *In re*

Mabry, Bar Docket No. 228-00 at 9 (BPR Nov. 24, 2003), *recommendation adopted*, 851 A.2d 1276 (D.C. 2004) (per curiam):

> An attorney's failure to respond to Bar Counsel's inquiries concerning a client complaint filed against him and his failure to comply with a Board Order compelling him to respond has been held repeatedly to constitute conduct that seriously interferes with the administration of justice.

In accordance with this principle, we concur with the Committee that Respondent violated Rule 8.4(d) when she failed to respond to Bar Counsel's inquiries following the issuance of a Board order compelling a response. *See Kanu*, Bar Docket Nos. 130-05, *et al*.

RECOMMENDED SANCTION

The single most important determinant of our sanction recommendation in this matter is the fact that the violations in this case, serious in themselves, occurred while the Board's recommendation that she be suspended for her persistent refusal to respond to Bar Counsel's inquiries in *Lea I*, despite orders of the Board and the Court that she do so, was pending before the Court. Respondent's disregard of the District of Columbia unauthorized practice regulation and her refusal once again to respond to Bar Counsel's request for a response to the allegations that she engaged in the unauthorized practice of law and her concomitant dishonest misconduct are more blameworthy than they otherwise might be.

We concur in the Committee's recommendation that Respondent be suspended for 180 days "in addition and consecutive to the period of suspension imposed . . . in *Lea I*." HC Rep. p. 31. A suspension of that length of time was proposed by Bar Counsel and is amply warranted by the record. We also agree with the Committee's conclusion that a fitness requirement is appropriate under *In re Cater*, 887 A.2d 1 (D.C. 2005), but that it need not be added to the sanction here as it was already imposed in *Lea I*. Respondent can simply be put on notice (if the Committee's report and this report have not already done so) that she "must address the

misconduct involved in this case in seeking reinstatement." *Steinberg*, Bar Docket No. 423-01 at 29 n.13. Thus, two separate fitness requirements are unnecessary. We do not recommend, however, the Committee's proposed requirement that, "before resuming the practice of law," Respondent must show that she "has fully and promptly responded to the ethical complaints in the instant matter." HC Rep. p. 31. The Court's action on our finding that Respondent has violated Rules 5.5(a), 7.1, 7.5 and 8.4(c) will be an adjudication of the misconduct stated in the GEICO complaint. A future response by Respondent to GEICO's allegations therefore would be both unnecessary and of no legal significance.

CONCLUSION

The Board finds that Respondent Terri Y. Lea violated Rules 5.5(a), 7.1, 7.5, 8.1(b), 8.4(c) and 8.4(d) of the District of Columbia Rules of Professional Conduct and D.C. Bar. R. XI, § 2(b)(3). We recommend that she be suspended from the practice of law in the District of Columbia for a period of 180 days in addition and consecutive to the period of suspension imposed in *Lea I*, 969 A.2d 881.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /JPM/
James P. Mercurio

Dated: February 4, 2010

All members of the Board concur in this Report and Recommendation, except Ms. Cintron who did not participate.