

IN RE: KIMBERLY GAIL LATORRACA

NO. BD-2019-057

S.J.C. Order of Term Suspension entered by Justice Kafker on June 10, 2019.¹

After pleading guilty to criminal charges involving generally the unlawful interception of oral communications and receiving a sentence of probation, the respondent stipulated to a five-month suspension of her law license. In their stipulation, bar counsel and the respondent presented substantial evidence in mitigation.

SUMMARY²

The respondent Kimberly Gail LaTorraca was admitted to practice in Massachusetts on December 16, 1998.

On December 11, 2017, the respondent pleaded guilty in the Hingham District Court to one count of unlawful interception of oral communications in violation of M.G.L. c. 272, § 99(C)(1) (a felony), one count of possession of an interception device with intent to commit an unlawful interception in violation of M.G.L. c. 272, § 99(C)(5), and one count of disclosure of the contents of an intercepted wire communication in violation of M.G.L. c. 272, § 99(C)(3) or (4). The respondent was placed on probation for one year.

The respondent's conviction was based on the following facts. In August 2015, following an investigation of a domestic dispute between the respondent and her boyfriend, the respondent obtained a Chapter 209A domestic restraining order against the boyfriend. The boyfriend was charged with assault and battery. The respondent remained at the residence they had shared in Scituate for several months. On November 25, 2015, the respondent left the residence and the boyfriend moved back into it. The 209A restraining order remained in effect against the boyfriend. On May 1, 2016, the police received a report from a third party that the respondent had planted a listening device behind the refrigerator in the boyfriend's house before leaving the property on November 25, 2015. The third party reported that the respondent had played the audio recordings of conversations from within the boyfriend's residence to friends. The police removed the listening device, and the boyfriend confirmed he had not put it there.

The respondent's criminal conduct violated Mass. R. Prof. C. 8.4(b) and 8.4(h).

In mitigation, the respondent was a victim over a period of years of physical and emotional abuse and stalking by the boyfriend, both before and after the criminal misconduct. The August 2015 incident involved both physical and verbal abuse of the respondent by the boyfriend in front of the respondent's then seven-year-old son. The boyfriend's conduct resulted in an investigation and a finding of neglect against the boyfriend by the Massachusetts Department of Children and Families in September 2015. At the time she placed the listening device, the respondent was continuing to experience fear of being stalked and harmed leading up to and after the time of the criminal misconduct.

In further mitigation, at the time of the misconduct, the respondent was in the midst of a seven-year divorce proceeding with her husband and former law partner. The key disputed issue in the divorce concerned the parties' contested child custody claims. The respondent feared the situation involving the boyfriend would jeopardize her custody claim in the divorce.

Without disputing the wrongfulness of her conduct, the respondent maintained that her criminal conduct was an ill-thought-out reaction to her stress and trauma from being harassed and

¹ The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

abused by her boyfriend, and her fear of being stalked by the boyfriend after the assault. The respondent maintained that she entered the plea agreement in her criminal matter in part due to her serious emotional and financial obligations related to her ongoing divorce proceeding and her fear of retaliation by the boyfriend.

Continued fear of the boyfriend resulted in the respondent's decision to decline to appear as a witness in the criminal case against the boyfriend, resulting in the dismissal of the assault and battery charges against the boyfriend in March 2017. The respondent obtained extensions of the 209A restraining order against the boyfriend to April 8, 2017, when she let the restraining order lapse due to fear of retaliation by the boyfriend. The respondent's divorce was ultimately resolved in 2018.

The respondent completed her one-year probation without incident. The respondent obtained an evaluation for her anxiety, depression, and PTSD symptoms resulting from the abuse.

On August 24, 2018, bar counsel filed a petition for discipline based upon the respondent's conviction. The respondent filed an answer on November 2, 2018. On January 17, 2019, the parties filed the respondent's amended answer to the petition and stipulation of the parties. The respondent also filed an affidavit with documents subject to a protective order. The parties jointly recommended that the respondent be suspended for five months for her conduct, due to the unique and compelling mitigating factors involving domestic abuse, which warranted a significant downward departure from the typical sanction for a felony conviction. On May 13, 2019, the board voted to recommend to the Supreme Judicial Court that the respondent be suspended for five months, effective on the date of the order. On June 10, 2019, the county court (Kafker, J.) ordered that the respondent be suspended for five months, effective immediately.