

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 13-387  
District Docket No. IV-2011-0025E

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IN THE MATTER OF :  
SUSAN A. LOWDEN :  
AN ATTORNEY AT LAW :

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Decision

Argued: March 20, 2014

Decided: May 21, 2014

Michelle L. Ferreri appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IV Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.5(b) (failure to set out the basis or rate

of the fee in writing), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).<sup>1</sup> We determine to impose a reprimand.

Prior to the start of the ethics hearing, respondent and the presenter entered into a stipulation of facts. In the stipulation, respondent admitted the allegations set forth in the complaint.

Respondent was admitted to the New Jersey bar in 1991. She has no history of discipline.

In November 2001, Robert Hale retained respondent to file a motion for a reduction and/or termination of his alimony obligations to his former wife.<sup>2</sup> Respondent did not provide him with a written fee agreement, as required by R. 5:3-5. She sent bills to Hale, which he paid.

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<sup>1</sup> The complaint is silent on the subsections for RPC 1.4 and RPC 1.5. We have applied the relevant subsections, based on the language of the complaint.

<sup>2</sup> Hale lives in Florida and participated in the ethics hearing by telephone.

In the course of the representation, respondent misled Hale by telling him that she was preparing the motion, that she was responding to a motion filed by Hale's ex-wife, and that she was filing a motion for reconsideration.<sup>3</sup> Instead of performing the above work and despite the passage of approximately nine years after being retained, respondent never filed a motion on Hale's behalf or any documents at all. At the DEC hearing, respondent had no explanation for her dereliction.

In March 2003, respondent billed Hale for the preparation of a motion on his behalf. In March 2004, she forwarded him a draft of the motion. As noted above, respondent never filed the motion. She admitted that she misled Hale, when she told him that she was waiting for the court to make a determination on his motion, which she never filed.

During the representation, Hale made numerous calls to respondent, attempting to ascertain the status of his case. Respondent conceded that she did not return Hale's calls or calls from an attorney representing him in Florida.

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<sup>3</sup> The record is silent on the subject of the motion for reconsideration.

As a result of respondent's inaction, a \$70,000 judgment was entered against Hale for unpaid alimony. Hale was required to hire counsel in Florida to resolve the judgment issue.

Also, respondent failed to reply to the DEC investigator's repeated requests for a written reply to Hale's grievance and to provide the investigator with a copy of her file and billing records, despite the investigator's repeated requests that she do so.

Respondent stipulated that she violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(b), RPC 8.1(b), RPC 3.2, and RPC 8.4(c).

At the DEC hearing, respondent apologized to Hale and stated that she did not question his allegations against her. She told the hearing panel that she did not have a specific recollection of her representation of Hale and that she did not have a paper file.

By way of mitigation, respondent asked the hearing panel to consider her "history" (presumably, her lack of prior discipline), her active membership in several county bars, and her many clients' satisfaction with her services, during her twenty years at the bar. The presenter also asked the hearing

panel to consider respondent's lack of disciplinary history, as mitigation.

The hearing panel report essentially repeated the stipulated facts. It concluded that, in light of respondent's admissions, she was guilty of the unethical conduct set out in the stipulation, for which it recommended a reprimand.

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

Respondent stipulated that she was guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to provide a written fee agreement, failure to expedite litigation, failure to cooperate with disciplinary authorities, and misrepresentation to her client. The facts set forth in the stipulation provide clear and convincing evidence of those RPC violations, with the exception of RPC 3.2 (failure to expedite litigation). Because respondent never filed the motion on Hale's behalf, there was no litigation to expedite. We, therefore, dismiss that charge.

Misrepresentation to clients requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). "Truthfulness and professionalism are paramount in an attorney's relationship with the client." Ibid. A reprimand may still be imposed, even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (for a period of four years, attorney misrepresented to his client that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

In aggravation, two factors must be considered. First, the length of time that respondent's misconduct spanned. She allowed nine years to pass, during which Hale thought that she was pursuing the matter on his behalf. Second, her inaction caused serious harm to Hale, who had a \$70,000 judgment entered against him. Hale testified that he was threatened with incarceration.

It would seem, thus, that discipline stronger than a reprimand is warranted. However, we took into account respondent's impeccable professional record of twenty-three years, concluding that her conduct was, therefore, aberrational. Moreover, we considered her quick acknowledgment of wrongdoing. We determine, thus, that a reprimand is sufficient discipline for her infractions. In addition, we direct respondent to complete a course in law office management, within ninety days of the Court's order, and that she provide the Office of Attorney Ethics with proof that she did so.

Members Doremus, Gallipoli, and Singer would impose a censure and concur with the requirement that respondent must complete a law office management course.

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  
Bonnie C. Frost, Chair

By: Ellen A. Brodsky  
Ellen A. Brodsky  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Susan A. Lowden  
Docket No. DRB 13-387

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Argued: March 20, 2014

Decided: May 21, 2014

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus				X		
Gallipoli				X		
Hoberman			X			
Singer				X		
Yamner			X			
Zmirich			X			
Total:			6	3		

  
Ellen A. Brodsky  
Chief Counsel