Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-117
District Docket No. I-2017-0011E

In the Matter of

Michelle J. Douglass

An Attorney at Law

Decision

Argued: June 20, 2019

Decided: November 8, 2019

Stephanie Albrecht-Pedrick appeared on behalf of the District I Ethics Committee.

Carl D. Poplar 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 I Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.15(b) (failing to promptly notify a third party of receipt of funds in which that person has an interest); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 3.3(a)(5) (failing

to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 4.1(a)(2) (failing to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons detailed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1988. During the relevant time frame, she maintained an office for the practice of law in Somers Point, Atlantic County, New Jersey. She has no prior discipline.

In 2006, the grievant, attorney George Farmer, represented Ernest D. Coursey, Sr., the plaintiff in employment litigation filed in the Superior Court of New Jersey, Atlantic County, against the City of Atlantic City (Atlantic City); various government officials; and a union, the Atlantic City Supervisors' Associates/Local 108 (Local 108). Nine years later, in 2015, after

the claims against the government officials had been dismissed, Coursey settled his claim against Atlantic City for $250,000. As part of the settlement agreement, Farmer accepted a capped payment of $450,000 from Atlantic City toward his fees, which the court had determined to be $647,500. On September 30, 2015, just weeks after the settlement with Atlantic City, Farmer successfully moved to withdraw as Coursey's attorney. Farmer and Coursey's relationship had irreparably deteriorated due to a fee dispute and difference of opinion over whether the litigation against Local 108 should proceed.

After proceeding pro se for a period of time, Coursey retained respondent to represent him in the pending litigation against Local 108. A former client of respondent had introduced her to Coursey, and, initially, respondent agreed to assist Coursey, on a pro bono basis, in both his fee dispute with Farmer and his pending lawsuit against Local 108, as a "favor" to her former client.

Respondent failed to reach a settlement with Farmer, realized the complexity of the litigation issues involving Local 108, and determined that, under the circumstances, she was unwilling to continue to represent Coursey pro bono. Consequently, on November 9, 2015, respondent and Coursey jointly filed a substitution of attorney with the court, seeking respondent's immediate withdrawal as Coursey's counsel. Farmer filed a motion objecting

to respondent's withdrawal, claiming a vested interest in the outcome of the litigation against Local 108 and arguing that respondent should remain as counsel to protect his interests. On January 8, 2016, following a hearing in which respondent, Farmer, and Local 108's attorney, Nancy Oxfeld, participated, the court issued an order that released respondent from her representation of Coursey but included a directive that, "if there is a settlement between Mr. Coursey and the union, those funds shall be deposited with the New Jersey Superior Court Trust Fund Unit" (SCTFU).

Ultimately, Coursey reached a settlement with Local 108, and again retained respondent, pro bono, for her assistance in finalizing the settlement agreement and payment of the settlement proceeds. According to respondent, Coursey, and Oxfeld, Coursey had negotiated the terms of the settlement with the union on his own, in a pro se status. Respondent, however, signed the settlement agreement and release between Coursey and Local 108, as Coursey's attorney. The agreement stated that respondent was obligated to distribute the settlement proceeds to Coursey or "as otherwise directed by the Court," and, on April 14, 2016, respondent forwarded the executed document to Oxfeld.

In turn, Local 108 issued four settlement checks, totaling $10,000, payable to respondent, in behalf of Coursey. Respondent deposited the checks

in her attorney trust account and, when they cleared, disbursed the entirety of the funds to Coursey. Respondent, thus, failed to abide by the court order directing that the settlement proceeds be deposited with the SCTFU; moreover, she informed neither the court nor Farmer of her receipt of the settlement funds.

On April 26, 2016, a Stipulation of Dismissal signed by the parties, Oxfeld, and respondent was filed with the court. On March 15, 2017, almost one year later, in e-mails to Farmer, respondent denied, multiple times, that she had represented Coursey in respect of the settlement with Local 108, asserting that she had served merely as an "advisor." She also repeatedly declined to answer Farmer's questions regarding whether the Local 108 settlement funds were being held in trust per the court order, calling such inquiries "discovery issues." On March 20, 2017, respondent requested from the court a copy of the filed Stipulation of Dismissal, identifying herself as Coursey's attorney.

During the ethics hearing, Coursey testified that respondent had charged him no legal fee in respect of reviewing the settlement with Local 108; had made clear that she would not litigate the case against Local 108; and had not participated in Coursey's settlement negotiations with Oxfeld. Rather, Coursey negotiated the settlement with Local 108 himself, and then retained

respondent, for a second time, to review and advise him regarding the negotiated settlement agreement, and to be his "conduit" for the settlement proceeds from the union.

On April 13, 2016, respondent sent Coursey a letter, repeatedly asserting that she was not his "attorney of record" in the Local 108 matter, despite conceding that she had assisted him in reviewing and finalizing the settlement with the union and had accepted the settlement monies in his behalf. As to the settlement funds, in respect of the court's order, respondent wrote, "I am no longer the attorney of record in this litigation and I am no longer under direction by the Court therefore I am disbursing the [Local 108 settlement] monies directly to you . . . . I suggest that you safeguard these monies until the claims you have against Mr. Farmer resolve."

Thereafter, respondent defended Coursey in a lawsuit that Farmer had filed seeking the $400,000 remainder of his asserted $850,000 in attorneys' fees (reduced by the $450,000 paid by Atlantic City and despite the court's determination that his fee was $647,500), plus a portion of any recovery from Local 108. Farmer contended that his original retainer agreement with Coursey had been replaced by a new fee agreement, which Coursey had violated. Farmer's lawsuit asserted that, unless the verdict or award from Local 108 exceeded $400,000, he was entitled to the entire settlement proceeds. During

the ethics hearing, Farmer argued that his position was reasonable, in light of the 1,800 hours he had billed in the case, and "since the risk [of trying the case against the union] was all on me," given the unknown financial status of the union.[1]

During the ethics hearing, respondent steadfastly maintained that she did not have an attorney-client relationship with Coursey in respect of his settlement with Local 108. Although she admitted having signed both the settlement agreement and the stipulation of dismissal as Coursey's attorney, she claimed that Oxfeld had drafted those documents and that she simply had not objected, in order to facilitate the settlement. As to the court order directing that the settlement proceeds be deposited with the SCTFU, respondent testified that, at the time she assisted Coursey in finalizing the settlement, she had forgotten about the court's directive. Had she remembered the court order, she would have called the court for clarification or directed Coursey to deposit the $10,000 in settlement funds with the SCTFU.

Multiple witnesses testified regarding respondent's reputation for honesty and lawfulness. Additionally, respondent submitted numerous character letters.

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[1] The record does not provide details regarding the outcome of this litigation between Farmer and Coursey.

In her closing, the DEC presenter conceded that the facts presented did not support findings, by clear and convincing evidence, that respondent had violated either RPC 3.3(a)(1) (false statement of material fact to a tribunal) or RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal). The DEC granted the presenter's motion to dismiss RPC 3.3(a)(1) and (5).

Focusing its analysis on the January 8, 2016 court order directing that any settlement proceeds payable to Coursey from Local 108 be deposited with the SCTFU, the DEC found clear and convincing evidence that respondent violated both RPC 1.15(b) and RPC 3.4(c) in her handling of the Local 108 settlement proceeds. Specifically, the DEC concluded that respondent's assertion that she had forgotten about the court order was not credible, noting that she had participated in the hearing, fewer than six months earlier, that resulted in the order; received in trust and disbursed the settlement proceeds directly to Coursey; and wrote a letter to Coursey, claiming to no longer be bound by the court's order, yet, cautioning Coursey to "safeguard" the funds until he resolved the dispute with Farmer.

The DEC further concluded that respondent's improper conduct had been driven by her "outrage" regarding the "positions and demands advanced by Mr. Farmer" toward Coursey. The DEC emphasized that respondent

represented Coursey in his fee dispute against Farmer, knew of Farmer's interest in the $10,000 in settlement proceeds, and had made the inappropriate decision to conceal the status of those funds to Farmer and to contravene the court's order in an effort to shield the funds from Farmer.

The DEC determined to dismiss the remaining charges against respondent, noting that it had granted the presenter's motion to dismiss the RPC 3.3(a)(1) and RPC 3.3(a)(5) charges. In respect of the allegations that respondent had violated RPC 4.1(a)(1) and RPC 4.1(a)(2), the DEC determined that respondent had not intentionally confused or misled anyone regarding the scope of her attorney-client relationship with Coursey. Similarly, the DEC determined that respondent had not violated RPC 8.4(a), (c), or (d), finding that, although she chose to not be forthright with Farmer regarding the Local 108 settlement proceeds and her role in receiving and disbursing them, she never actually lied to him, and, thus, there was no clear and convincing evidence of an ethics violation stemming from their interactions. The DEC further found no evidence that respondent was dishonest with the court or had impacted the administration of justice.

In aggravation, the DEC characterized respondent's testimony at the ethics hearing as "far from forthright," determining that she had knowingly disbursed the Local 108 settlement proceeds to Coursey in violation of a court

order, yet, during the disciplinary proceedings, refused to admit her mistake, "cling[ing] to the untenable position that she was not Mr. Coursey's attorney and thus was not bound" by the court order. The DEC further found that respondent had intentionally misdirected the $10,000 to subvert Farmer, and, given the relatively small sum of money, "thought that she could get away with it."

In mitigation, the DEC cited respondent's "strong reaction to Mr. Farmer's egregious treatment of Mr. Coursey;" her unblemished disciplinary history; and her impeccable standing in the community. The DEC, thus, recommended that respondent be reprimanded.

In respondent's May 29, 2019 brief to us, and during oral argument, she continued to assert that no attorney-client relationship existed between her and Coursey in respect of his settlement with Local 108, and that she, thus, committed no ethics violations. She couched her role as merely a "conduit for the funds that went from the Union to Mr. Coursey," and maintained that the court that issued the underlying order likely would have found that she had not violated the order.

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. Specifically, Farmer represented Coursey in

employment litigation, filed in 2006, against Atlantic City, various government officials, and Local 108. In 2015, nine years into the litigation, Coursey entered into a settlement agreement whereby Atlantic City agreed to pay him $250,000 and to pay Farmer a capped payment of $450,000 toward his attorneys' fees. Following the settlement with Atlantic City, Farmer successfully moved to withdraw as Coursey's attorney, in light of the deterioration of their relationship over a fee dispute and a difference of opinion as to whether the litigation against Local 108 should proceed.

After Coursey had proceeded pro se, respondent agreed to represent him, pro bono, in the pending litigation against Local 108 and in the fee dispute with Farmer. On November 9, 2015, however, having failed to reach any settlement with Farmer and realizing the complexity of the litigation issues involving Local 108, respondent was unwilling to continue to represent Coursey pro bono, and, thus, she and Coursey filed a substitution of attorney with the court, seeking respondent's immediate withdrawal as Coursey's counsel. Respondent's withdrawal was successful, despite Farmer's motion objecting to her release, wherein he claimed a vested interest in the outcome of the litigation against Local 108. On January 8, 2016, following a hearing in which respondent, Farmer, and Oxfeld participated, the court issued an order releasing respondent from her representation of Coursey, but directing that, "if

there is a settlement between Mr. Coursey and the union, those funds shall be deposited with the" SCTFU. Respondent, thus, was well aware of the court's order and was duty-bound to comply with it.

Thereafter, Coursey, once again in a pro se capacity, negotiated the terms of a settlement with Local 108. He again retained respondent, who served pro bono, to assist in effectuating the settlement. Respondent's protests to the contrary are neither credible nor supported by her own actions in respect of perfecting the settlement with Local 108. Specifically, respondent signed the settlement agreement and release between Coursey and Local 108, as Coursey's attorney. That agreement properly incorporated the court's standing order in the case, stating that respondent was obligated to distribute the settlement proceeds to Coursey or "as otherwise directed by the Court." On April 14, 2016, after reviewing and signing the document, and advising her client to sign it, respondent forwarded the executed document to Oxfeld.

Local 108 then issued four settlement checks, totaling $10,000, payable to respondent, in behalf of Coursey. Respondent deposited the checks in her attorney trust account and, when they cleared, disbursed the entirety of the funds to Coursey, in contravention of the court order directing that such settlement proceeds be deposited with the SCTFU. She also failed to inform Farmer, whom she knew had an interest in the funds, or the court, which had

issued an order regarding the funds, of her receipt and disbursement of the settlement funds. We, therefore, find that respondent's conduct in respect of the Local 108 settlement proceeds violated RPC 1.15(b) and RPC 3.4(c).

On April 26, 2016, a Stipulation of Dismissal was signed by the parties, Oxfeld, and respondent, and was filed with the same court that respondent attempted to claim, in these proceedings, no longer had authority over her or the case. Subsequently, respondent and Farmer exchanged e-mails wherein respondent denied, multiple times, that she represented Coursey in respect of the settlement with Local 108, asserted that she merely served as an "advisor," and declined to answer Farmer's questions regarding whether the Local 108 settlement funds were being held in trust in accordance with the court order. On March 20, 2017, respondent wrote to the court, requesting a copy of the filed Stipulation of Dismissal, and identified herself as Coursey's attorney. Respondent's communications with Farmer violated RPC 4.1(a)(1) and (2) and RPC 8.4(c), because, notwithstanding her denials, she represented to the court that Coursey was her client.

Respondent's consciousness of her guilt in respect of her ethics violations is borne out in an April 13, 2016 letter she sent to Coursey, wherein she attempted to negate the authority of the court's order over her conduct, and to justify the deceitful communications she had made to Farmer. Specifically,

in the letter, respondent repeatedly asserted that she was not Coursey's "attorney of record" in respect of Local 108, despite admitting that she had assisted him in reviewing and finalizing the settlement with the union and had accepted the settlement monies in his behalf. As to the settlement funds, respondent wrote "I am no longer the attorney of record in this litigation and I am no longer under direction by the Court therefore I am disbursing the [Local 108 settlement] monies directly to you . . . . I suggest that you safeguard these monies until the claims you have against Mr. Farmer resolve." Despite these clumsy efforts to the contrary, we find that respondent was obligated to follow the court's order regarding the Local 108 settlement proceeds and had clearly acted as Coursey's attorney in respect of finalizing the settlement, receiving the settlement funds, and disbursing them to Coursey, in violation of the court's order and RPC 3.4(c).

Notably, subsequent to the settlement with Local 108, respondent defended Coursey in the lawsuit that Farmer filed in respect of their ongoing fee dispute.

The DEC properly dismissed the allegations that respondent violated RPC 3.3(a)(1) (false statement of material fact to a tribunal) and RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal), in light of the presenter's

concession, at the end of the ethics hearing, that she had failed to prove the requisite elements of those charges. Under the facts of this case, we also dismiss the RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another) allegation, as we routinely do when such an allegation serves as a "catchall" with no nexus to independent misconduct in a matter. Moreover, we dismiss the RPC 8.4(d) (conduct prejudicial to the administration of justice) allegation, as respondent's violation of the court order is adequately addressed by the RPC 3.4(c) charge, and there is no evidence in the record that the court suffered articulable prejudice or delay in respect of her misconduct.

In sum, respondent violated RPC 1.15(b) (failure to safeguard funds); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 4.1(a)(2) (failure to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct. Cases involving an attorney's failure to

notify clients or third persons of receipt of funds or to deliver those funds, in violation of RPC 1.15(b), generally result in the imposition of an admonition or a reprimand, depending on the circumstances. See, e.g., In the Matters of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition imposed on attorney who, in three personal injury matters, neither promptly notified his clients of his receipt of settlement funds nor promptly disbursed their share of the funds; the attorney also failed to communicate with the clients; we considered that the attorney had no prior discipline); In the Matter of Jeffrey S. Lender, DRB 11-368 (January 30, 2012) (admonition; in a "South Jersey" style real estate closing in which both parties opted not to be represented by a personal attorney in the transaction, the attorney inadvertently overdisbursed a real estate commission, neglecting to deduct from his payment an $18,500 deposit for the transaction; he then failed to rectify the error for over five months after the overdisbursement was brought to his attention; violations of RPC 1.3 and RPC 1.15(b); the attorney had no prior discipline); and In re Dorian, 176 N.J. 124 (2003) (reprimand imposed on attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney previously was admonished for gross neglect, failure to communicate, failure to withdraw, and

failure to cooperate with disciplinary authorities, and reprimanded for gross neglect, lack of diligence, and failure to communicate).

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. See, e.g., In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); and In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an

obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition).

A reprimand is the typical discipline for violations of RPC 4.1 and RPC 8.4(c), absent other serious ethics infractions or an ethics history. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (for a five-year period, the attorney misrepresented to her employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation); In re Egenberg, 211 N.J. 604

(2012) (attorney was guilty of engaging in a conflict of interest in a real estate transaction and making misrepresentations on a RESPA statement, in violation of RPC 4.1(a) and RPC 8.4(c); we found, as significant mitigating factors, the attorney's unblemished twenty-three-year career at the time of his misconduct, and the thirteen years that had passed, without incident, before the grievance was filed); and In re Frey, 192 N.J. 444 (2007) (attorney, while representing a purchaser, misrepresented to a real estate agent that he had received an additional deposit of $31,900; when the attorney received from his client an $11,000 installment toward the deposit, he later released those funds to his client, despite his fiduciary obligation to hold them and to remit them to the realtor).

Given the above disciplinary precedent, a censure could easily be justified for the totality of respondent's misconduct. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In aggravation, we consider respondent's continued refusal to take responsibility for her misconduct, particularly in respect of her knowing violation of the court order governing the Local 108 settlement proceeds. Respondent's unyielding attempts to justify her actions in this case are unsettling, but appear grounded in her perspective that she is being punished

for attempting to do a good deed, in a case where she perceived that another attorney was victimizing his own client.

In mitigation, respondent has no prior discipline in more than thirty years at the bar; the genesis of her misconduct was her desire to provide pro bono legal services to Coursey, whom she believed Farmer was attempting to exploit; and her reputation in her community is demonstrably impeccable. We find the mitigation in this case compelling and accord it significant weight. On balance, thus, we determine that a reprimand is adequate discipline to protect the public and to preserve public confidence in the bar.

Members Boyer and Hoberman voted to impose an admonition. Member Singer voted to dismiss all charges against respondent and filed a separate dissent.

Member Joseph did not participate.

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
Bruce W. Clark, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michelle J. Douglass
Docket No. DRB 19-117

Argued: June 20, 2019

Decided: November 8, 2019

Disposition: Reprimand

Members	Reprimand	Admonition	Dismiss	Recused	Did Not Participate
Clark	X				
Gallipoli	X				
Boyer		X			
Hoberman		X			
Joseph					X
Petrou	X				
Rivera	X				
Singer			X		
Zmirich	X				
Total:	5	2	1	0	1

Ellen A. Brodsky
Chief Counsel