SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-341
District Docket Nos. XIV-2012-0338E
and XIV-2012-0658E

IN THE MATTER OF	:
SALEEMAH MALIKAH BROWN	:
AN ATTORNEY AT LAW	:

Decision

Decided: March 31, 2014

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The three-count complaint charged respondent with having violated RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); RPC 1.5(a) (unreasonable fee); RPC 1.15(b) (failure to promptly notify a client about the receipt of funds or to promptly turn over funds that the client is entitled to receive); RPC 1.15(c)

(failure to keep separate funds in which a lawyer and another claim an interest, until the dispute concerning their respective interests are resolved); RPC 1.15(d) and R. 1:21-6 (recordkeeping violations); RPC 5.5(a) (practicing law while ineligible); RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority) (mistakenly cited in the complaint as RPC 8.1(a)); and RPC 8.4(c), more properly, RPC 8.1(a) (false statement to disciplinary authorities).

For the reasons expressed below, we determine that a three-month suspension is appropriate for respondent's unethical conduct.

Respondent was admitted to the New Jersey bar in 2008. At the relevant times, she maintained a law office in Paterson, New Jersey. She has no history of discipline.

Service of process was proper in this matter. On August 19, 2013, the OAE sent copies of the complaint, by regular and certified mail, to respondent's last known office address, 21 Lee Place, Second Floor, Paterson, New Jersey 07505. The certified mail receipt, signed by respondent, showed that the mail was delivered on September 7, 2013. The regular mail was not returned. Respondent did not file an answer within the prescribed time.

On October 1, 2013, the OAE sent a letter to the same address, by regular and certified mail. The letter notified respondent that, if she did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The United States Postal Service's tracking system form showed that the certified mail was delivered on October 3, 2013. The regular mail was not returned.

As of the date of the certification of the record, October 8, 2013, respondent had not filed an answer to the ethics complaint.

Count one of the complaint alleged that, on October 21, 2011, respondent was declared administratively ineligible to practice law in New Jersey for failure to register with the IOLTA Fund, as required by R. 1:20A-2. The record included a certification from Ellen D. Ferrise, Executive Director of the IOLTA Fund. According to Ferrise's certification, she had sent respondent three notices of registration requirements for the 2011 IOLTA compliance cycle: in December 2010, to respondent's business address; on June 13, 2011, to her home address; and, on August 8, 2011, by publication in the New Jersey Law Journal.

During respondent's ineligibility, she practiced law nevertheless. She appeared in court at criminal trials and in landlord/tenant matters and she filed complaints. After the OAE informed her that she was ineligible, she took the steps necessary to cure her ineligibility. She was placed on eligible status on July 17, 2012.

During respondent's period of ineligibility, her trust account became overdrawn. Specifically, as of June 1, 2012, the account was overdrawn by $9.24. On June 5, 2012, the posting of a $200 check for filing fees created a $209.24 overdraft in the account. At the time of the overdraft, respondent was not holding any client funds in her trust account.

The OAE's review of respondent's records uncovered that she did not perform three-way reconciliations, did not maintain a ledger card for personal funds for bank fees, and did not keep sufficient funds in the trust account to cover bank charges.

Count one of the complaint charged respondent with failing to maintain her trust and business account records in accordance with R. 1:21-6, thereby violating RPC 1.15(d), and with practicing law while on the IOLTA ineligible list, in violation of RPC 5.5(a).

Count two alleged that respondent entered into an "agreement to provide legal services" with Brenda and Vonward

Alford, in a landlord-tenant matter, for a fee of $750. The agreement provided that the $750 was a minimum fee, "regardless of the amount actually spent on this case." Paragraph two of the agreement stated as follows:

> 2. **Additional Legal Services.** If you need any other legal services which may or may not be related to the above matter, you and the Law Firm may make a new agreement to provide for such services. Without such agreements, the Law Firm is not required to provide any additional services.
>
> [Ex.4.]

Respondent did not present the Alfords with another agreement for legal services but, as seen below, charged them additional fees nevertheless.

Notwithstanding that both respondent and the Alfords confirmed to the OAE that the $750 for the landlord-tenant matter was a fixed fee, the agreement itself listed an hourly rate of $350. Respondent's first invoice to the Alfords, dated November 28, 2011, listed the billing type as "fixed fee," the amount as $750, and the receipt of a $500 payment. Respondent's second invoice, dated December 12, 2011, again showed a $750 fixed fee and indicated a "payment received" of $250 and an invoice balance of "$0.00."

The trial in the Alford's landlord-tenant matter took place on March 21, 2012. The Alfords filed a claim for the return of

their security deposit. The landlord filed a counterclaim for outstanding rent. On March 28, 2012, the judge entered a judgment in favor of the Alfords, in the amount of $1,328.27 plus costs, and dismissed the landlord's counterclaim.[1]

On or about April 20, 2012, respondent received a $778.27 check from the landlord. She did not turn over the funds to the Alfords. On or about May 17, 2012, respondent received a second check from the landlord, in the amount of $613.57 but, again, did not turn over the funds to the Alfords. The two checks totaled $1,391.84.

Respondent deposited the Alfords' funds into her business account, instead of her trust account. She took the $1,391.84 as "fees 'earned,'" claiming that the Alfords had an outstanding bill of $1,500. Respondent "waived" the remaining balance of $108.16.

Respondent's third invoice to the Alfords showed a fee of $1,500: "Landlord/tenant – $750 for the security deposit and $750 for motions." It also showed the receipt of a $778.27 payment (the landlord's first check), leaving an invoice balance of $721.73.

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[1] The complaint listed the judgment amount as $1,391.84, representing the Alford's security deposit and, presumably, the assessed costs.

Respondent's fourth invoice showed the receipt of the landlord's second check ($613.57) and an invoice balance of $108.16. Underneath the balance was the word "WAIVED." All four invoices displayed the same file number, "# 11 10416."

Respondent did not inform the Alfords that she had collected any part of the judgment against the landlord. Therefore, on June 19, 2012, the Alfords sought a levy against the landlord's bank account. The record does not reveal the outcome of the levy. The Alfords only discovered that respondent had taken the funds as fees when she replied to the grievance.

During the course of the representation, respondent did not return the Alfords' many telephone calls. She also did not claim or reply to the Alford's February 14, 2012 certified letter, seeking information about the status of their case. The Alfords' letter asserted that, due to the landlord-tenant dispute on their credit report, they had been turned away, when they had tried to rent other apartments. According to the complaint, the Alfords' "credit report was being affected by the landlord's claim that that they owed her additional rent."

On June 7, 2012, the Alfords sent another certified letter to respondent, which was returned unclaimed. The letter inquired about the status of the court-ordered return of their security deposit.

The second count of the complaint charged respondent with a violation of RPC 1.4(b), for failing to keep the Alfords apprised about the status of their matter; RPC 1.4(c), for failing to explain the matter to them, to the extent reasonably necessary to permit them to make informed decisions about the representation; RPC 1.5(a), for charging an unreasonable fee, in excess of the initial $750 fixed fee; RPC 1.15(b), for failing to promptly notify the Alfords of her receipt of funds from the landlord and for failing to promptly deliver those funds to the Alfords; RPC 1.15(c), for failing to keep separately the funds over which she and the Alfords claimed an interest, until there was an accounting and severance of their interests; and RPC 8.4(c), for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Count three of the complaint alleged that, at the OAE's March 13, 2013 demand audit, respondent claimed that she had sent an email to the Alfords, notifying them of her additional fees. In turn, the Alfords denied having received any invoices for respondent's additional fees, adding that they had seen the invoices, for the first time, when they had received respondent's reply to their grievance. Respondent had attached the third and fourth invoices, dated April 24 and May 23, 2012, respectively, to her reply to the grievance. According to the

complaint, both invoices showed a $1,500 bill for services for which respondent had already "collected a 'fixed fee' of $750."

On March 14, 2013, the OAE left respondent a voicemail message, requesting a copy of the email that she had allegedly sent to the Alfords about her additional fees and an explanation for her practicing law while ineligible. On May 24, 2013, the OAE called respondent to follow up on the March 14, 2013 voicemail message. Respondent did not answer or return the call. In addition, the OAE was unable to leave a voicemail message for her.

On July 9, 2013, the OAE faxed a letter to respondent, again requesting that she provide an explanation for practicing law while ineligible and that she submit a copy of her email to the Alfords about the additional fees.[2] Respondent did not comply with the OAE's request.

The third count of the complaint charged that respondent violated RPC 8.1(a), by failing to cooperate with the ethics investigation (more properly, a violation of RPC 8.1(b)), and RPC 8.4(c), by making a false statement to disciplinary

[2] Exhibit 19 is the OAE's letter that was faxed to respondent. It was also sent to respondent by regular mail. Among other things, the letter stated that the OAE had tried to call respondent several times and had left messages with her secretary, asking respondent to call the OAE. Respondent did not do so.

authorities (more properly, a violation of RPC 8.1(a)), presumably for misrepresenting to the OAE that she had sent an email to the Alfords about the additional fees.

With two exceptions, the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

The two exceptions are the charged violations of RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary for the Alfords to make informed decisions about the representation) and RPC 8.4(c) (conduct involving misrepresentation). As to RPC 1.4(c), nothing in the record indicates that respondent had to explain the matter to the Alfords, in detail, to permit them to make a decision on how to proceed. As to RPC 8.4(c), the complaint does not recite specific facts to support a finding of a violation of that rule.

The balance of the allegations amply supports the remaining RPC charges. Respondent practiced law while on the IOLTA list of ineligible attorneys (RPC 5.5(a)); failed to comply with the recordkeeping rules (RPC 1.15(d)) (count one); failed to properly communicate the status of the matter to the Alfords (RPC 1.4(b)); charged them an unreasonable fee by billing them

above the $750 fixed fee (RPC 1.5(a)); failed to promptly notify the Alfords of her receipt of the checks from the landlord and failed to turn over those funds to them (RPC 1.15(b)); failed to keep the received funds separately until the dispute concerning their respective interests was resolved (RPC 1.15(c)) (count two); misrepresented to the OAE that she had sent an email to the Alfords about additional legal fees (RPC 8.1(a)); and failed to cooperate with the OAE's investigation (RPC 8.1(b)) (count three).

In all, respondent violated RPC 1.4(b), RPC 1.5(a), RPC 1.15(b), (c), and (d), RPC 5.5(a), and RPC 8.1(a) and (b).

The only issue left for determination is the proper discipline for respondent's ethics misdeeds. As seen below, with the exception of misrepresentation to ethics authorities, each one of respondent's RPC violations generally warrants discipline no greater than an admonition or a reprimand, absent special circumstances. The totality of respondent's conduct, however, requires significantly greater discipline.

Practicing law while ineligible is generally met with a reprimand, if the attorney is aware of the ineligibility, as here. Respondent received three notices from the IOLTA Fund about the registration requirements and did not comply with those requirements. She practiced law for nine months, during

her period of ineligibility. See, e.g., In re Marzano, 195 N.J. 9 (2008) (motion for reciprocal discipline following attorney's nine-month suspension in Pennsylvania; the attorney represented three clients after she was placed on inactive status in Pennsylvania; the attorney was aware of her ineligibility; she was suspended for nine months in Pennsylvania); In re Coleman, 185 N.J. 336 (2005) (motion for reciprocal discipline following attorney's two-year suspension in Pennsylvania; while on inactive status, the attorney practiced law in Pennsylvania for nine years, signing hundreds of pleadings and receiving in excess of $7,000 for those services); and In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar).

Standing alone, recordkeeping irregularities, failure to promptly deliver funds to clients or third persons, failure to keep separately funds in which the attorney and another person claim an interest, charging an unreasonable fee, and failure to cooperate with disciplinary authorities typically result in an admonition. See, e.g., In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time,

attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain uncashed, and failed to perform one of the steps of the reconciliation process); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (attorney failed to use a trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions); In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (in three personal injury matters, attorney did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney also failed to properly communicate with the clients; mitigation considered); In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to promptly deliver funds to a third party; he also failed to memorialize the rate or basis of his fee); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance of settlement proceeds to client after her medical bills were paid); In the Matter of Gary T. Steele, DRB 10-433 (March 29, 2011) (following a real estate closing, attorney paid himself a $49,500 fee from the closing

proceeds, knowing that the client had not authorized that disbursement, and did not promptly turn over the balance of the funds to the client; the attorney also did not return the file to the client, as requested); In the Matter of Ronald S. Kaplan, DRB 01-031 (May 22, 2001) (attorney who came into possession of settlement funds in which he and a prior attorney had an interest did not keep the funds separately until there was an accounting and severance of their interests); In the Matter of Steven S. Neder, DRB 99-081 (May 27, 1999) (attorney did not transmit to a wife funds that a husband, the attorney's client, had given him for that purpose and took his fee from funds that the husband gave him to pay the wife's legal fees); In the Matter of Angelo Bisceglie, Jr., DRB 98-129 (September 24, 1998) (attorney billed a Board of Education for work not authorized by the Board, although it was authorized by its president; the fee charged was unreasonable, but did not reach the level of overreaching); In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997) (attorney found guilty of unreasonable fee by receiving $500 in excess of the contingent fee permitted by the rules); In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate with the ethics investigator until finally retaining counsel to assist her); and

In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the DEC's investigation of the grievance; the attorney also failed to communicate with the client).

Although the commission of any ethics offense is always troubling, respondent's most serious violation was her lie to the OAE that she had sent her clients an email about additional fees that she had charged them. The discipline imposed on attorneys found guilty of lying to ethics authorities, if no fabrication of a document is involved, generally ranges from a reprimand to a censure, depending on the extent of the attorney's deceit, the presence of other violations, and mitigating or aggravating factors. See, e.g., In re Masciocchi, 208 N.J. 406 (2011) (attorney reprimanded for grossly neglecting four client matters, engaging in a pattern of neglect, failing to communicate with clients, misrepresenting to the OAE that he had arranged for attorney coverage in one of the matters, making misrepresentations to clients in two of the matters and, in a fifth matter, failing to set forth in writing the rate or basis of his fee and to return the unearned portion of the fee); In re DeSeno, 205 N.J. 91 (2011) (attorney reprimanded for misrepresenting to the district ethics committee the filing date on a complaint on the client's behalf; the

attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Schroll, 213 N.J. 391 (2013) (censure imposed on attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, when in fact he knew that the complaint had been dismissed over a year earlier; for the next three years, the attorney continued to mislead the district ethics committee secretary that the case was still active; the attorney also misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants and was found guilty of gross neglect, lack of diligence, and failure to communicate with the client; no prior discipline); In re Falzone, Jr., 209 N.J. 420 (2012) (attorney censured for lying to the OAE and failing to comply with the recordkeeping rules and to supervise his wife-secretary, thereby enabling her to steal $279,000 from his trust account); In re

Prothro, 208 N.J. 340 (2011) (censure for attorney who falsified his law school transcript by altering his law school honors and professional activities; the attorney then submitted the transcript to his first and second employers; later, the attorney misrepresented to the disciplinary investigator that he had not submitted a falsified transcript or made any misrepresentations to his first employer); In re Corbett, 202 N.J. 463 (2010) (motion for discipline by consent; attorney received a censure for making a misrepresentation to the OAE; the attorney also negligently misappropriated client funds; in aggravation, the attorney was a municipal court judge and had been admonished and reprimanded); In re Allocca, 185 N.J. 404 (2005) (censure for attorney who made material misrepresentations to the ethics investigator about a real estate mortgage pay-off, payment of taxes, and recording of the deed, in order to obscure his mishandling of the underlying matter; the attorney also lacked diligence in the case; no prior discipline); In re Kaplan, 208 N.J. 487 (2012) (three-month suspension for attorney who failed to adequately communicate with a post-judgment matrimonial client and for four years lacked diligence in pursuing a simple matter, the distribution of client's share of his ex-wife's pension; at the ethics hearing, the attorney promised the client and the hearing panel

that she would "launch into the preparation of the QDRO with vigor and dispatch," at no cost to the client, and that the file [would] not be leaving [her] desk;" instead, the attorney did nothing to advance the client's interests after the ethics hearing and did not return twenty or so of his phone calls; we noted that the client's loss of faith in the disciplinary system was all too apparent and that the attorney's pattern of verbal deceit toward the client and the district ethics committee was no less egregious than if it had been the fabrication of a written document; no prior discipline); and In re Gross, 216 N.J. 401 (2014) (attorney suspended for six months for, among other improprieties, lying in an affidavit to the Supreme Court that he had sent a check to the New Jersey Lawyers' Fund for Client Protection to cure his ineligibility for failure to pay the annual attorney assessment; in fact, the attorney had remained ineligible and had continued to practice law; also, for one year following a real estate closing, the attorney failed to pay two contractors for services rendered and then lied to the contractors that he had issued checks to them; in addition, the attorney failed to cooperate with disciplinary authorities by not appearing for three OAE demand audits and allowing the disciplinary matter to proceed as a default for failure to file an answer to the complaint; we considered that the attorney's

conduct was aggravated by his history of failure to cooperate with the OAE's investigations, for which he was twice temporarily suspended, and by defaulting in three disciplinary matters; altogether, the attorney violated RPC 1.15(b), RPC 3.3(a), RPC 5.5(a), RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c); two prior censures).

In light of the above-cited precedent, a reprimand or a censure would have been appropriate for respondent's lie to the OAE alone. But respondent committed many other ethics improprieties. She practiced law knowing that she was ineligible to do so for failure to register with the IOLTA Fund; she failed to turn over funds that the clients were entitled to receive; she did not inform the clients that she had received those funds; she used those funds as legal fees, without the clients' authorization; she charged the clients an unreasonable fee; she failed to comply with the clients' multiple requests for information about their case; she failed to keep her attorney records in accordance with the recordkeeping rules; and she failed to cooperate with the OAE. She also failed to file an answer to the formal ethics complaint, as a result of which this disciplinary matter proceeded on a default basis.

An attorney whose conduct included many of the same RPC violations received a six-month suspension. In re Gross, supra,

216 N.J. 401. Like respondent, Gross violated RPC 1.15(b), RPC 5.5(a), RPC 8.1(a), and RPC 8.1(b), and also defaulted in the disciplinary matter. Gross practiced law while ineligible, lied to the Supreme Court about having cured his ineligibility, failed to cooperate with the OAE, and failed to promptly disburse funds that two contractors were entitled to receive. Gross committed an additional violation not found here: he made a misrepresentation (RPC 8.4(c)), when he told the two contractors that he had issued checks to them. Respondent, in turn, is guilty of other violations not present in Gross: her recordkeeping was deficient, she did not properly communicate with the Alfords, and, without the Alfords' consent, she removed a fee from their funds. Both Gross and respondent defaulted in their disciplinary matters. Gross had received two censures. Respondent has no prior discipline. All in all, however, the two cases are analogous.

Gross received a six-month suspension for the totality of his conduct, aggravated by certain factors. As indicated above, one very decisive factor that convinced us that he should be suspended for six months was his pattern of failure to cooperate with disciplinary authorities. Twice he was temporarily suspended for failure to appear at three demand audits scheduled by the OAE; three times he defaulted in his disciplinary

matters. Therefore, to equate respondent's conduct with that of Gross seems too harsh. We, therefore, determine that respondent should receive a shorter term of suspension than Gross' six-month suspension. We find that a three-month suspension is the proper form of discipline for the aggregate of respondent's conduct.

Members Gallipoli and Zmirich voted to impose a six-month suspension.

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: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Saleemah M. Brown
Docket No. DRB 13-341

Decided: March 31, 2014

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli			X			
Hoberman		X				
Singer		X				
Yamner		X				
Zmirich			X			
Total:		7	2			

Isabel Frank
Acting Chief Counsel