

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-062  
District Docket No. XIV-2014-0333E

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IN THE MATTER OF :  
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: :  
DENISE TAMARA FISCHER, :  
a/k/a DENISE TAMARA HERMAN: :  
: :  
AN ATTORNEY AT LAW :  
: :

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Decision

Argued: June 16, 2016

Decided: November 9, 2016

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper service.

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

This matter was before us on a motion for reciprocal discipline, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion is based on respondent's March 20, 2014 reprimand in Florida, for the New Jersey equivalent of RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority).

The OAE recommends that we impose a reprimand. For the reasons expressed below, we agree with the OAE's recommendation.

Respondent was admitted to the New Jersey bar in 1987, the District of Columbia bar in 1993, and the Florida bar in 2006. She currently resides in Redington Shores, Florida. She has no history of discipline in New Jersey. Respondent's license was administratively revoked in 2015, pursuant to R. 1:28-2(c), for failure to pay the annual attorney assessment for seven consecutive years.<sup>1</sup>

In April 2012, the Florida Bar filed a disciplinary complaint against respondent, alleging that she had entered into a business transaction with a client or knowingly acquired an ownership, possessory, security, or other pecuniary interest adverse to a client, a violation of Florida Rule 4-1.8(a), and, further that she failed to respond, in writing, to an official inquiry by bar counsel or a disciplinary agency during the course of an investigation into the lawyer's conduct, a violation of Florida Rule 4-8.4(g), equivalent to New Jersey's RPC 1.8(a) and RPC 8.1(b), respectively.

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<sup>1</sup> We note, initially, that although respondent's license has been revoked, pursuant to R. 1:28-2(c), we, nevertheless, have jurisdiction over this matter, as respondent's misconduct occurred prior to the date of the Court's revocation Order.

The facts outlined in the ethics complaint and referee's report are as follows. In September 2008, Gwen Novak retained respondent, for a \$500 fee, for representation in an ejectment action that had been filed against her in Pinellas County, Florida. Respondent and Novak were acquaintances who lived in the same condominium complex.

During the course of the representation, respondent informed Novak about her financial problems and asked Novak for a \$10,000 loan, giving Novak the impression that she would repay the loan no later than February 2009. On December 1, 2008, Novak loaned respondent the money.

The loan was unsecured. Respondent did not disclose the terms of the transaction to Novak in writing; did not advise Novak of the desirability of seeking the advice of independent counsel; and did not obtain Novak's informed written consent to the essential terms of the transaction.

In January 2009, the plaintiff in the ejectment lawsuit against Novak dismissed the complaint without prejudice. In February 2009, Novak sought repayment, in full, of the loan to respondent, which respondent "failed or refused" to pay. As of the date of the Florida ethics complaint, respondent had repaid Novak only approximately \$1,750.

In April 2011, Novak filed a breach of contract action against respondent in the Circuit Court of Pinellas County, Florida, which was served on respondent in June 2011. In August 2011, a default judgment was entered against respondent.

Also in April 2011, Novak filed an "Inquiry/Complaint" against respondent with the Florida bar. Bar counsel sent letters to respondent, requesting a reply to Novak's complaint, on June 1 and July 6, 2011. Respondent failed to reply to either letter. Therefore, on July 29, 2011, Florida Bar Counsel informed respondent that the matter was being forwarded to the Florida Bar's Tampa office for consideration.

Thereafter, by letter dated August 8, 2011, respondent replied to Bar Counsel that, on August 3, 2011, she had e-mailed Novak that she could directly deposit \$5,000 into Novak's account, if Novak provided her with the bank account information. Novak maintained that she received neither respondent's e-mail nor the partial payment.

On April 2, 2012, the Florida Bar filed an ethics complaint against respondent. Respondent's May 10, 2012 answer asserted that she and Novak were close friends and that, at the time of the loan, she did not represent Novak. Respondent added that Novak had offered to loan her the money, at no interest, with

the understanding that respondent would repay her when she was financially able to do so.

In October 2012, respondent entered into a conditional guilty plea for consent judgment and a stipulation for entry of consent judgment, wherein she agreed to a public reprimand with the conditions that if she were found liable in the civil lawsuit against her, she would satisfy any monetary judgment within one year from the entry of the judgment and that there was no need for a hearing in the matter. Respondent admitted that she violated Florida Rule 4-8.4(g) (failure to timely respond in writing to any official inquiry by Bar Counsel or a disciplinary agency), which is equivalent to New Jersey RPC 8.1(b).

On March 20, 2014, the Supreme Court of Florida approved the October 9, 2012 uncontested report of the referee accepting consent judgment, reprimanded respondent, and directed her to satisfy the monetary judgment entered against her in Pinellas County Circuit Court within one year of the date of the Supreme Court Order. Respondent did not notify the OAE of the Florida discipline, as required by R. 1:20-14(a)(1).

The OAE argued that, although the standard discipline for failure to cooperate with disciplinary authorities is an admonition, respondent's failure to notify it of the discipline

imposed in Florida should be treated as an aggravating factor, warranting an increase in the discipline, citing In re Sica, 222 N.J. 23 (2015), DRB 14-301 (March 26, 2014). Therefore, the OAE asserted that a reprimand should be imposed.

We determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

Bound by the Florida findings, we can find only that respondent is guilty of having violated RPC 8.1(b). We cannot find a violation of RPC 1.8(a) because that issue was not litigated, as the Florida matter was resolved by the parties' consent. Thus, the only issue left for determination is whether the circumstances of this case warrant substantially different discipline under subsection (E).

As the OAE asserted, ordinarily, an admonition is imposed for failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the ethics committee investigator regarding his representation of a client in three criminal defense matters); In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the ethics committee's attempts to obtain information from him about his representation of a client in a real estate matter); In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (attorney admittedly failed to cooperate with the district ethics committee's attempts to obtain information

about his representation of a client in an expungement matter); and In the Matter of Raymond Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so; thereafter, he appeared at the ethics hearing and participated fully during the disciplinary process).

Although an admonition is the typical discipline imposed in failure to cooperate cases, we, like the OAE, find that respondent's failure to notify the OAE of her Florida discipline is an aggravating factor under In re Sica, supra, 222 N.J. 23. We, therefore, find that this matter does not fall within the scope of R. 1:20-14(a)(4)(E), grant the OAE's motion, and determine that a reprimand is warranted.

Members Hoberman and Rivera 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  
Bonnie C. Frost, Chair

By:

  
Ellen A. Brodsky

Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Denise T. Fischer  
Docket No. DRB 16-062

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Argued: June 16, 2016

Decided: November 9, 2016

Disposition: Reprimand

MEMBERS	Reprimand	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	7		2

  
Ellen A. Brodsky

Chief Counsel