SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-339
District Docket No. XI-2015-0001E

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

Decision

Decided: May 31, 2017

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 District XI Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 3.4(g) (threatening to present criminal charges to obtain an improper advantage in a civil matter), RPC 7.1(a)(4) (making a false or misleading communication about the attorney's legal fee), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent filed a timely motion to vacate the default and for "other relief."

For the reasons set forth below, we determined to deny the motion to vacate the default and for "other relief" and to impose a censure on respondent for her misconduct.

Respondent was admitted to the New Jersey bar in 2008. At the relevant times, she maintained an office for the practice of law in Englewood Cliffs.

Effective July 17, 2014, respondent was suspended from the practice of law for three months, in a default matter, for practicing law while on the IOLTA list of ineligible attorneys (RPC 5.5(a)), failing to comply with the recordkeeping rules (RPC 1.15(d)), failing to communicate with her clients (RPC 1.4(b)), charging an unreasonable fee (RPC 1.5(a)), failing to promptly notify her clients of her receipt of funds on their behalf and failing to turn over those funds (RPC 1.15(b)), failing to keep funds segregated until the dispute between her and her clients was resolved (RPC 1.15(c)), misrepresenting a material fact to the Office of Attorney Ethics (OAE) (RPC 8.1(a)), and failing to cooperate with the OAE (RPC 8.1(b)). In re Brown, 217 N.J. 614 (2014). She was reinstated on December 10, 2014. In re Brown, 220 N.J. 104 (2014).

On September 12, 2016, respondent was declared ineligible to practice law based on her failure to comply with the annual registration requirements and to pay her annual registration fee

to the Lawyers' Fund for Client Protection (LFCP). She remains ineligible to date.

In the matter now before us, service of process was proper. On July 7, 2016, the DEC sent a copy of the formal ethics complaint to respondent's office address, 560 Sylvan Avenue, Suite 3160, Englewood Cliffs, New Jersey 07632, by regular and certified mail, return receipt requested. The receipt for the certified letter was returned, bearing an illegible signature and confirming delivery on July 11, 2016. The letter sent by regular mail was not returned.

On August 5, 2016, the DEC sent a letter to respondent at the same address, by regular mail. The letter directed her to file an answer within five days and informed her that, if she failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The letter was not returned.

As of September 9, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

Prior to our discussion of respondent's motion, we first set forth the allegations of the complaint, which are deemed to be true, due to respondent's default. R. 1:20-4(f)(1).

On January 18, 2013, Omayra Veguilla retained respondent to represent her in a divorce matter. Thereafter, Veguilla communicated with respondent via e-mail and telephone. Respondent's replies to Veguilla's e-mails were "sporadic and in large part nonresponsive," and she failed to return most of Veguilla's telephone calls. Thus, in February 2014, Veguilla terminated the representation and hired new counsel.[1]

Based on these facts, the DEC charged respondent with having violated RPC 1.3 and RPC 1.4(b). The DEC again charged respondent with having violated RPC 1.4(b), based on her refusal to release Veguilla's file to her new attorney, despite numerous requests.

On January 18, 2013, Veguilla had signed an "Agreement To Provide Legal Services In Family Actions," which stated that she

[1] According to a fee arbitration panel determination, which required respondent to refund $2,450 to Veguilla, respondent had performed what amounted to three hours of billable time on Veguilla's case. This included an initial consultation, the drafting of a divorce complaint, and the submission of Veguilla's case information statement. Although an early settlement panel hearing was scheduled, it did not go forward because opposing counsel did not appear. The fee arbitration panel's understanding of the work that respondent had performed was based solely on the representations of Veguilla. Respondent failed to appear for the proceeding.

would be billed at an hourly rate of $350. The agreement also required her to pay an initial retainer of $1,700, which she paid at that time.

On that same date, respondent issued an invoice, reflecting a fixed fee of $3,500 and the $1,700 payment, leaving a balance of $1,800. Veguilla also was required to pay a $275 filing fee. The invoice described the professional services to be rendered as "Criminal Allegations," presumably, an error. Subsequent invoices also described the fee as fixed.

On March 28, 2013, respondent required Veguilla to sign a "Payment Arrangment [sic] Form." The form provided, in part, that Veguilla's failure to comply with the payment plan set forth therein "may result in criminal charges in violation of N.J.S.A. 2C:20-8 Theft of Services."

Based on these facts, the DEC charged respondent with having violated RPC 7.1(a)(4) and RPC 8.4(c), in two respects. First, although the retainer agreement stated that Veguilla would be charged an hourly rate, "various invoices" described the fee as fixed. Second, respondent "made false and misleading communications about her fee, regarding the potential criminal allegations which may have been filed against . . . Veguilla."

A review of the record demonstrates two salient facts. First, in addition to the $1,700 paid by Veguilla, in January

2013, she made two payments in March, totaling $475, one of which was made on the day she signed the payment arrangement form. At that point, the balance due was $1,325.

Under the terms of the payment arrangement form, Veguilla was required to pay respondent $250 per week until the balance was paid in full, which would have been sometime in early May 2013. Instead, with one exception, the record reflects that Veguilla made monthly payments of $250 from April through September 2013, at which point she had satisfied the outstanding balance, plus the $275 filing fee.[2]

Second, the record is devoid of a single itemized bill submitted to Veguilla. Rather, the invoices appear to be nothing more than receipts for payments received from Veguilla. They reflect no description of services provided and no charges for those services.

Finally, respondent was charged with having violated RPC 3.4(g). Presumably, this allegation was based on respondent's requiring Veguilla to sign the payment arrangement form, in which Veguilla acknowledged that she could face criminal charges if she did not pay the fee in accordance with the payment schedule and

[2] Veguilla paid $350 in May 2013.

by respondent's inserting the phrase "criminal allegations" on "an invoice."

MOTION TO VACATE THE DEFAULT AND FOR "OTHER RELIEF"

On December 30, 2016, Office of Board Counsel received from respondent a timely-filed motion to vacate the default and for "other relief." The other relief included a request that we accept her proposed answer and consolidate this DEC matter with a separate OAE matter, involving a multi-count ethics complaint, arising out of her conduct in three client matters. The OAE matter, which is at the hearing stage, includes a charge of knowing misappropriation. For the reasons expressed below, we determined to deny the motion to vacate the default. Thus, we also deny, as moot, respondent's request for other relief, including consolidation of this matter with the OAE matter.

To vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. In our view, respondent has failed to satisfy either requirement.

In respect of the first prong of the test, respondent asserts that she did not file an answer to the ethics complaint because she did not receive it until sometime in November 2016. She claims that she had moved to the office address used by the

DEC in April 2016 and that her mailbox was located elsewhere within that complex. Further, she was out of the office for most of July and August 2016, "diligently working" on the OAE matters with her attorney, Kim D. Ringler.

Respondent asserts that, from July through October 2016, she learned from "other entities" that their mail to her had been returned to them as "undeliverable as addressed." During that same period, respondent was requesting unidentified persons and/or entities to re-mail to her items that she had not received. Moreover, she claims that, during that period, her "service" did not notify her that she had received any correspondence from the DEC. She was not aware that someone had signed for the July 11, 2016 letter, and she does not know who signed the receipt.

On an unidentified date in November 2016, respondent's "service" notified her that mail was being held for her. She found the mail, wrapped in a rubber band, in the "hallway near the mailboxes." The ethics complaint and "Default" were among the "outdated mailings" that had been banded together.[3] When respondent retrieved the complaint and "Default," she sent them to Ringler immediately, who had been unaware of the DEC matter.

[3] By "Default," we presume that respondent refers to the DEC's August 5, 2016 five-day letter.

In our view, respondent has not satisfied the first of the two requirements for vacating a default. Accepting as true her claim that she did not receive the complaint until November 2016, the fact remains that, as early as July – the very month that the complaint was sent to her – she was on notice that she was not receiving mail sent to her office address. Yet, respondent did nothing to correct that situation. Moreover, she continued to do nothing throughout the months of August, September, October, and November. The only reason she became aware of the ethics complaint was that some of her mail suddenly appeared in November.

There is nothing in respondent's certification establishing that she did anything to address the problem with her mail, even though she had been on notice – for quite some time – of a problem. Respondent's apparent disinterest in correcting a known problem with the delivery of her mail, for months, is not a "reasonable explanation" for her failure to file an answer to the ethics complaint.

In respect of prong two, respondent's certification is silent on the issue of any meritorious defense. Because she submitted a proposed form of answer, we reviewed it to ascertain what her defense(s) might be.

R. 1:20-4(e) requires the answer to a formal ethics complaint to set forth, among other things, "a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint." Thus, an answer that simply denies an allegation is insufficient. The proposed answer suffers from this defect in many respects.

In respect of the RPC 1.3, RPC 1.4(b), and RPC 8.4(c) charges, respondent simply denied the allegations. A flat denial is not "a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint." Further, and importantly, a flat denial provides us with no ground upon which to determine whether respondent has a meritorious defense to the charges. As explained below, these deficiencies are of no consequence because the allegations of the complaint did not support these charges in the first instance.

The third count charged respondent with threatening to present criminal charges against her client to obtain an improper advantage (RPC 3.4(g)), by requiring her to sign the payment arrangement form, which provided, in part, that Veguilla's failure to comply with the payment plan set forth therein "may result in criminal charges in violation of N.J.S.A. 2C:20-8 Theft of Services." Respondent's proposed answer to these charges does not assist her. Although she admits that she required Veguilla to

sign the form, she claims that RPC 3.4(g) applies only to "interactions regarding opposing sides" and, thus, the Rule does not apply. Respondent is incorrect.

In In re Ledingham, 189 N.J. 298 (2007), and In re McDermott, 142 N.J. 634 (1995), the attorneys were found guilty of violating RPC 3.4(g) because they either threatened (Ledingham) or actually instituted (McDermott) theft of services charges against their clients based on the clients' failure to pay their legal fees. Clearly, then, respondent has not asserted a meritorious defense to the RPC 3.4(g) charge.

The fourth count of the complaint, which charged respondent with having violated RPC 7.1(a)(4), did not identify which of the Rule's six subparagraphs applied. As explained below, we concluded that two subparagraphs are applicable to the facts of this case, that is, RPC 7.1(a)(4)(iv) and (v).

> A communication is false or misleading if it:
>
> (4) relates to legal fees other than:
>
> (iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter; [and]
>
> (v) the availability of credit arrangements[.]

In her proposed answer, respondent maintains that the inconsistency between the fee agreement ($350 hourly fee) and the invoices (flat fee) did not violate RPC 7.1(a)(4).

Respondent's proposed answer did not address the other aspect of the RPC 7.1(a)(4) charge, that is, the "false and misleading communications about her fee, regarding the potential criminal allegations which may have been filed against . . . Veguilla." This allegation involved the payment arrangement form. Respondent simply "denied" that allegation, which cannot be considered a meritorious defense.

Finally, there is the RPC 1.4(b) charge, which was based on respondent's failure to turn over Veguilla's file to new counsel. Although respondent denied that she had failed to turn over the file to new counsel, she provided no facts to support her claim. Regardless, as discussed below, RPC 1.4(b) does not apply to a lawyer's failure to turn over a former client's file to new counsel.

In summary, respondent has neither provided a reasonable explanation for her failure to file an answer to the complaint nor asserted a meritorious defense to the ethics charges brought against her and, therefore, the motion to vacate the default is denied. Consequently, the request for other relief also is denied, as moot.

* * *

Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Nevertheless, each charge in the complaint must be supported by sufficient facts on which to determine that unethical conduct has occurred. We conclude that the facts recited in the complaint support most of the charges of unethical conduct.

Veguilla retained respondent in January 2013. Other than the fee arbitration panel's identification of the services performed by respondent during the next year, which were based solely on Veguilla's representations, the record contains no indication of what services respondent should have performed, but did not, during that time. In the absence of this information, the allegations of the complaint are insufficient to establish that respondent lacked diligence in representing Veguilla. We, thus, determined to dismiss the RPC 1.3 charge.

In contrast, the allegations of the complaint clearly and convincingly support a determination that respondent failed to communicate with her client, a violation of RPC 1.4(b). She

repeatedly ignored Veguilla's attempts to communicate with her by e-mail and telephone.[4]

As stated above, respondent also was charged with having violated RPC 7.1(a)(4) and RPC 8.4(c), due to the inconsistent representations regarding the nature of the fee itself (hourly or fixed) and by requiring Veguilla to sign the payment agreement form, in which Veguilla acknowledged that her failure to pay respondent's fee could result in the filing of criminal charges against her for theft of services.

RPC 7.1(a) prohibits a lawyer from making "false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement." Subparagraph (a)(4) provides six types of false or misleading communications regarding legal fees. As stated above, RPC 7.1(a)(4)(iv) and (v) are the pertinent provisions of the Rule.

The retainer agreement, which is a standard ALL-STATE LEGAL plain language family action fee agreement, clearly stated that Veguilla would be charged $350 per hour for respondent's services. If we view respondent's invoices, identifying her fee

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[4] Respondent did not violate RPC 1.4(b), by refusing to abide by numerous requests that she release Veguilla's file to her new attorney. That conduct falls within RPC 1.16(d), which governs an attorney's conduct after the termination of a representation.

as fixed, to constitute separate "communications" about her fee, then, under a literal reading of RPC 7.1(a)(4)(v), those inconsistent communications may be considered misleading. In our view, however, the inconsistency between them and the actual agreement does not fall within the scope of RPC 7.1(a)(4), and we could identify no authority to suggest otherwise.[5] The fee agreement itself clearly stated that Veguilla would be charged an hourly rate. Thus, its contents did not violate RPC 7.1(a)(4) in any respect.

We find, however, that although the fee agreement did not violate the Rule, the payment arrangement form violated RPC 7.1(a)(4)(v) because it was not simply a communication about "the availability of credit arrangements," that is, a payment plan consisting of weekly payments in the amount of $250. Rather, the document went further and included an "other than" term, in the form of the threat of prosecution for theft of services, should Veguilla refuse to pay the retainer fee. This was impermissible.

Moreover, the "theft of services" clause in the payment agreement form violated RPC 3.4(g), which prohibits an attorney

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[5] Michels, New Jersey Attorney Ethics (GANN 2017), mentions only briefly the Rule in his treatise, but in a context suggesting that the Rule's purpose is to identify the specific permissible fee arrangements that lawyers may enter into with clients (i.e., initial consultation fee, fixed fee, contingent fee, and hourly rate). Id. at 830.

from "threaten[ing] to present criminal charges to obtain an improper advantage in a civil matter." See, e.g., In re Ledingham, supra, 189 N.J. 298 (three-month suspension imposed on attorney who, in addition to "gross overreaching," sent a letter to his client, informing her "that the facts of your case indicate to me that you have committed a crime . . . under New Jersey Statute 2C:20-8, which is entitled 'Theft of Services,'" and threatening that, if she did not pay her bill in full within a month, he would contact the county prosecutor "to report this as a crime, which the facts support") and In re McDermott, supra, 142 N.J. 634 (reprimand imposed on attorney who filed criminal charges for theft of services against a client and her parents after the client stopped payment on a check for legal fees; we found it "distasteful" that the attorney had "refused to avail himself of other possible remedies, such as a civil suit for the collection of the fee or fee arbitration proceedings").

Certainly, the payment arrangement form's statement that Veguilla's failure to comply with its terms "may result in criminal charges" was less heavy-handed than the attorneys' threats in Ledingham and McDermott. Yet, the difference is only in degree. Respondent clearly violated RPC 3.4(g) in this respect.

Contrary to the allegations of the complaint, respondent did not violate RPC 3.4(g) by inserting "criminal allegations" in an invoice. The invoice at issue was given to Veguilla on the date she retained respondent and paid the $1,700 partial retainer. The phrase "criminal allegations" was inserted on the invoice under the section titled "Professional Services Details." Clearly, this was a mistake. Veguilla retained respondent to represent her in a matrimonial action, not in a matter involving criminal allegations. Moreover, the invoice was issued in January 2013, two months before Veguilla signed the payment arrangement form. Therefore, the reference to "criminal allegations" could not have been related to Veguilla's failure to pay the balance of the retainer.

Finally, the facts alleged in the complaint do not support the RPC 8.4(c) charge. Although the retainer agreement and invoices were contradictory in identifying the nature of the fee, nothing supports the finding that the contradiction was the result of dishonesty, fraud, deceit or misrepresentation on the part of respondent. Indeed, the contradiction appears to us to be nothing more than a mistake.

Similarly, the allegations of the complaint do not support the finding that, in threatening Veguilla, respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

She may well have believed that a client's failure to pay a bill constituted theft of services. Though that belief was unreasonable, unreasonable conduct is not equivalent to dishonest, fraudulent, or deceitful conduct, which requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011) (case dismissed for lack of clear and convincing evidence that the attorney had knowingly violated R. 1:39-6(b), which prohibits the improper use of the New Jersey Board of Attorney Certification emblem; attorney's website, which was created by a nonlawyer who wanted it to look "attractive and appealing," contained the emblem, even though attorney was not a certified civil trial lawyer; attorney was unaware of the emblem's placement on the website and, upon being told of its presence, he had it removed immediately; the emblem was not on his letterhead or business cards, and he did not tell anyone that he was a certified civil trial attorney); In re Uffelman, 200 N.J. 260 (2009) (noting that a misrepresentation is always intentional "and does not occur simply because an attorney is mistaken or his statement is later proved false, due to changed circumstances;" the RPC 8.4(c) charge against the attorney was dismissed because his unmet assurances to the client that he was working on various aspects of the case were the result of gross neglect rather than dishonest conduct; reprimand for gross

neglect, lack of diligence, and failure to communicate with the client); and In the Matter of Karen E. Ruchalski, DRB 06-062 (June 26, 2006) (case remanded where the attorney did not know that her statements in reply to a grievance were inaccurate but, nevertheless, stipulated that she had made misrepresentations; the attorney had not intended to make the misrepresentations and did not stipulate intent).

To conclude, the allegations of the ethics complaint clearly and convincingly support a finding that respondent violated RPC 1.4(b), RPC 3.4(g), and RPC 7.1(a)(4)(v).

The discipline imposed for a violation of RPC 3.4(g) ranges from an admonition to a suspension, depending on the severity of the conduct, the attorney's disciplinary history, and any aggravating or mitigating factors. See, e.g., In the Matter of Alan Ozarow, DRB 13-096 (September 26, 2013) (admonition for attorney who, within three weeks, sent four letters to his adversary, threatening to present to the county prosecutor criminal charges of fraud against the adversary's client; in mitigation, we considered that the attorney was not motivated by self-interest; that he was frustrated by what he perceived to be outrageous circumstances that his client was forced to endure; that he expressed remorse; that he discontinued his behavior upon learning from his adversary that his conduct violated the Rule;

that he readily acknowledged his wrongdoing, showing a sense of professional accountability; and that he had an unblemished disciplinary history in his twenty-six years at the bar); In the Matter of Mitchell J. Kassoff, DRB 96-182 (1996) (admonition for attorney who, after being involved in a car accident, sent a letter to the other driver indicating his intent to file a criminal complaint against him for assault; the letter was sent on the same day that the attorney had received a letter from the other driver's insurance company denying his damage claim); In re Mason, 213 N.J. 571 (2013) (reprimand for attorney who, in a letter to the lawyer for the buyer in an assets purchase transaction, threatened criminal charges against the buyer if he were to disturb any of the subject collateral; the attorney also had an ethics history evidencing a pattern of mistreating clients and attorneys); In re Hutchins, 177 N.J. 520 (2003) (reprimand imposed on attorney who, in attempting to collect a $142 bounced-check debt for a collection agency, told the seventy-three-year-old debtor that he had no alternative but to recommend to his client that civil and criminal remedies be pursued; the attorney would not provide a copy of the bounced check to the debtor, claiming it was too difficult to obtain it; in a second matter, the attorney sent two similar letters to a corporate debtor); In re McDermott, supra, 142 N.J. 634 (reprimand for attorney who

filed criminal charges for theft of services against a client and her parents after the client had stopped payment on a check for legal fees); In re Beckerman, 223 N.J. 286 (2015) (censure imposed on attorney who, during the course of post-divorce litigation, threatened his pro se adversary with federal prosecution for bankruptcy fraud in order to gain an advantage in the civil litigation); In re Balliette, 217 N.J. 277 (2014) (in a default matter, censure imposed on attorney, who, in a contentious post-judgment matrimonial matter, threatened to present criminal charges against the client's former spouse to obtain an improper advantage, that is, the proposed settlement; prior admonition); In re Ledingham, supra, 189 N.J. 298 (three-month suspension for attorney who threatened his client with criminal action for theft of services in order to collect his excessive fee); In re Supino, 182 N.J. 530 (2005) (three-month suspension imposed on attorney who threatened criminal charges against his former wife, the court administrator, and police officers in order to obtain an improper advantage in his own child custody and visitation case; the attorney also exhibited a pattern of rude and intimidating behavior toward judges, the court administrator, and law enforcement authorities); and In re Dworkin, 16 N.J. 455 (1954) (one-year suspension for attorney who wrote a letter threatening criminal prosecution against an

individual who forged an endorsement on a government check, unless the individual paid the amount of the claim against him and the legal fee that the attorney ordinarily charged in a criminal matter "of this type;" the Court found that the attorney had resorted to "coercive tactics of threatening a criminal action to effect a civil settlement").

In our view, the above cases do not support an admonition, given the facts before us here. Specifically, this matter is a default, and no mitigation has been presented, as was the case in Ozarow. Moreover, unlike the attorney in Kassoff, respondent did not act in the heat of the moment.

On the other hand, we consider a suspension to be too severe. Respondent's fee was not excessive, as in Ledingham. Unlike the attorney in Supino, she did not issue threats against multiple persons and otherwise act boorishly. She also refrained from making additional threats, such as the imposition of additional legal fees, as in Dworkin.

We also do not consider the reprimand and censure cases applicable here. As for the reprimand cases, although respondent has a prior three-month suspension, she does not have a history of mistreating clients and attorneys, as did the attorney in Mason. Unlike the attorney in Hutchins, she engaged in a single

violation of RPC 3.4(g). She did not actually file criminal charges against her client, as did the attorney in McDermott.

In respect of the censure cases, respondent did not act outrageously by making repeated threats and other disparaging and childish remarks (Beckerman). She was not heavy-handed like the attorney in Balliette, who went so far as to threaten a party with the loss of custody of her children.

An examination of the two cases involving threats in order to obtain payment of outstanding legal fees provides little guidance. Ledingham's fee was outrageous, and his overreaching played a significant role in the imposition of a suspension. Although McDermott actually filed criminal charges against his client and her parents, he received only a reprimand.

In the absence of any case that would control the outcome of this matter, we look to an admonition as the starting point in our analysis of the appropriate measure of discipline to impose on respondent for her violation of the above RPCs.

Respondent's violation of RPC 3.4(g), standing alone, would warrant an admonition. Her conduct involved one client. The threat was only that criminal charges "may" be filed versus that they would be filed or that they were actually filed. In addition, respondent did not follow through on her threat, as she

permitted Veguilla to pay the bill on a monthly basis until the outstanding balance was fully satisfied.

Although the payment arrangement form violated RPC 7.1(a)(4)(v), we have merged that violation with RPC 3.4(g) because the basis underlying the RPC 7.1(a)(4)(v) charge was the inclusion of the threat of prosecution in the document providing Veguilla with a payment plan. Thus, an admonition would remain appropriate for the violation of RPC 3.4(g) and RPC 7.1(a)(4)(v).

Finally, failure to communicate with the client, standing alone, results in the imposition of an admonition. See, e.g., In the Matter of Dan S. Smith, DRB 12-277 (January 22, 2013) (attorney failed to inform his client that the adversary had filed a motion to dismiss his appeal and that the motion was granted). Thus, ordinarily, an admonition would be sufficient discipline for respondent's violation of RPC 1.4(b), RPC 3.4(g), and RPC 7.1(a)(4)(v).

Yet, respondent has an ethics history, consisting of a three-month suspension for her violation of multiple RPCs, in a default matter. Based on respondent's prior history then, enhancement of an admonition to a reprimand would be warranted.

However, a reprimand is insufficient here because respondent has defaulted in this matter. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the

investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). Accordingly, we determine to impose a censure on respondent.

We further determined 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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Saleemah M. Brown
Docket No. DRB 16-339

Decided: May 31, 2017

Disposition: Censure

Members	Censure	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		

Ellen A. Brodsky
Chief Counsel