

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-287
District Docket Nos.
XIV-2016-0340E; XIV-2016-0641E;
XIV-2016-0716E; XIV-2016-0717E;
XIV-2016-0751E; XIV-2016-0752E;
XIV-2016-0753E; XIV-2016-0754E;
and XIV-2016-0755E

IN THE MATTER OF
NICOLE LEIGH PERSKIE
AN ATTORNEY AT LAW

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Decision

Decided: February 1, 2018

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The nine-count formal ethics complaint charged respondent with violations of RPC 1.15(d) (failure to comply with the recordkeeping requirements set forth in R. 1:21-6) and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count one); RPC 5.5(a)(1) (practicing while administratively ineligible and practicing while suspended), RPC 8.1(b), and RPC

8.4(b) (engaging in criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects)¹ (count two); RPC 5.5(a)(1), RPC 8.1(b), and RPC 8.4(b) (count three); RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep the client reasonably informed), RPC 5.5(a)(1), RPC 8.1(b), and RPC 8.4(b) (count four); RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 5.5(a)(1), RPC 8.1(b), and RPC 8.4(b) (count five); RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (count six); RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(b) (failure to communicate in writing the rate or basis of the fee), and RPC 8.1(b) (count seven); RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 5.5(a)(1), RPC 8.1(b), and RPC 8.4(b) (count eight); and RPC 1.1(a), RPC 1.1(b) (pattern of neglect), RPC 1.3, RPC 1.4(b), RPC 1.5(b), RPC 5.5(a)(1), RPC 8.1(b), RPC 8.4(b), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count nine).

For the reasons set forth below, we determine to impose a two-year prospective suspension.

Respondent earned admission to the New York bar in 2011 and to the New Jersey bar in 2013. During the relevant time frame,

¹ Pursuant to N.J.S.A. 2C:21-22, a person who knowingly engages in the unauthorized practice of law and either creates or reinforces a false impression that he or she is licensed to practice, derives a benefit, or causes injury to another is guilty of a crime of the fourth degree.

she maintained a law practice in Somers Point, New Jersey. On September 12, 2016, the Court entered an Order declaring respondent ineligible to practice law, based on her failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

On September 21, 2016, respondent was temporarily suspended for failure to cooperate with an ethics investigation. In re Perskie, 226 N.J. 515 (2016). She remains suspended to date.

Service of process was proper in this matter. On June 12, 2017, the OAE sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at both her last known office address and last known home address. The certified and regular mail sent to respondent's office was returned marked "Unable to Forward." Both the certified and regular mail sent to respondent's home address was returned marked "Moved, Left No Address."²

The OAE, thus, effected service of the complaint by publication, on July 10, 2017, in The Press of Atlantic City, and, on July 17, 2017, in the New Jersey Law Journal.

² New Jersey attorneys have an affirmative obligation to inform the CPF and the Office of Attorney Ethics of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c).

Respondent failed to file a verified answer to the complaint. Accordingly, on August 8, 2017, the OAE certified the record to us as a default.

We now turn to the allegations of the complaint.

Count One

Respondent engaged in the practice of law in Somers Point, New Jersey, in a partnership doing business as the Law Offices of Weber and Perskie, LLC (Weber and Perskie). The firm maintained attorney trust account XXXXX4159 at Bank of America, until it was closed, on May 31, 2016. Respondent represented, via her attorney registration, that she maintained attorney business account XXXXX9593 at Wells Fargo Bank.

On April 21, 2016, Bank of America notified the OAE of a \$249.03 overdraft of Weber and Perskie's attorney trust account, which occurred on April 19, 2016. By letter dated April 29, 2016, the OAE directed Weber and Perskie to provide a written explanation of the overdraft, and to produce monthly trust account bank statements for the prior three months and relevant client ledger cards, no later than May 13, 2016.

On May 11, 2016, Andrew Weber responded to the OAE's letter, representing that, in 2015, he and respondent had terminated their partnership, and that he had relinquished any

interest or control in the Bank of America trust account, effective January 1, 2016; as part of the dissolution of Weber and Perskie, he transferred all of his clients' funds to a new attorney trust account, opened exclusively for his new firm. Weber further stated that respondent was aware of the overdraft, and had received the OAE's letter requiring an explanation of it.

In response to the information from Weber, the OAE, by letter dated May 12, 2016, again directed respondent to provide a written explanation of the attorney trust account overdraft, and enclosed both its original letter and Weber's response. That same date, respondent called the OAE, representing that she would submit a written explanation of the overdraft, plus the required documentation, by May 20, 2016. Respondent, however, failed to submit either an explanation or the required documents.

On May 31, 2016, the OAE directed respondent, for a third time, to provide a written explanation of the overdraft, plus the required documentation, no later than June 7, 2016. That letter warned respondent that, if she failed to reply, the OAE could file a petition for her temporary suspension. On June 7, 2016, respondent submitted two letters to the OAE, dated June 1 and June 7, 2016. Although her letters purported to explain the

overdraft, respondent failed to provide the OAE with any of the required documentation.

Consequently, on June 14, 2016, the OAE directed respondent to appear for a demand audit, on July 12, 2016, and to produce specific records of the Weber and Perskie attorney trust and business accounts. That letter warned respondent that her failure to reply could result in the filing of both a formal ethics complaint charging her with violating RPC 8.1(b), and a petition for her temporary suspension from the practice of law. Respondent failed to appear for the demand audit, but both faxed and called the OAE to explain her absence. During the telephone call, respondent agreed to appear for the demand audit on July 18, 2016. On that date, however, respondent again failed to appear. Her assistant, Mary Bright, faxed a postponement request to the OAE at 6:28 on the morning of July 18, 2016.

On July 20, 2016, the OAE again directed respondent to appear for a demand audit, on August 2, 2016, and to produce the required records for the Weber and Perskie accounts. That letter was sent via fax, and regular and certified mail, to respondent's home address. Yet again, the OAE reminded respondent of her duty to cooperate, and warned her that the OAE could move for her temporary suspension if she failed to

respond. Although the fax was successfully delivered, both the certified and regular mailings were returned to the OAE.

On August 1, 2016, OAE investigator Jessica Fisher called respondent on her cellular phone to confirm her appearance at the demand audit. Respondent did not answer, and because her voice mailbox was full, Fisher was unable to leave a message. Fisher left a voicemail with respondent's assistant, Bright, requesting that respondent confirm the demand audit appearance, scheduled for the next day. Later that same date, respondent returned Fisher's call, promising to appear at the demand audit with the required documentation. The next day, however, respondent neither appeared for the demand audit nor contacted the OAE regarding her failure to appear.

On September 21, 2016, the Court granted the OAE's August 5, 2016 motion to temporarily suspend respondent from the practice of law. The OAE then contacted Bank of America and Wells Fargo to ensure that respondent's attorney business and attorney trust accounts were frozen, but learned that both accounts had been closed.

On September 29, 2016, the OAE requested that the Atlantic County Bar Association apply for the appointment of an attorney-trustee, pursuant to R. 1:20-19, to act on behalf of respondent's clients. On October 11, 2016, the Honorable Julio

L. Mendez, A.J.S.C., appointed Douglas Stanger as attorney-trustee for respondent's practice. According to Stanger, respondent was initially cooperative with his efforts as attorney-trustee, but later ceased cooperating. Consequently, Stanger contacted respondent's landlord to gain access to her office and client files.

As of June 5, 2017, respondent had not produced the records required for the demand audit. Consequently, the OAE subpoenaed her financial records, which revealed that, during the relevant time frame, respondent had made numerous cash withdrawals, in "round amounts," from her attorney trust account, in violation of R. 1:21-6(c)(2). The subpoenaed financial records also revealed improper account designations on the attorney trust account statements, checks, and deposit slips, and checks and deposit slips lacking information required under the recordkeeping rules.

Count Two

As set forth above, on September 12, 2016, respondent became ineligible to practice law for failure to pay her CPF assessment; on September 21, 2016, she was suspended from the practice of law for failure to cooperate with the OAE investigation underlying this matter. Thereafter, on October 6,

2016, James F. Ferguson, County Counsel for the Atlantic County Department of Law, informed the OAE that respondent was practicing law while suspended. On September 15 and 29, 2016, respondent had submitted letters of representation to the Atlantic County Sheriff's Department, in behalf of three clients, requesting the postponement of pending sheriff's sales in mortgage foreclosure matters.

On November 17 and 18, 2016, the OAE mailed (regular and certified, respectively) and faxed copies of Ferguson's grievance to respondent. The fax was successfully delivered, but the regular and certified mailings were returned to the OAE on December 2 and 12, 2016, respectively. Respondent failed to reply to the grievance.

Count Three

On October 21, 2016, Richard J. Tracy, a private practitioner who represented M&T Bank, filed a grievance with the OAE, alleging that respondent was practicing law while suspended. On September 20, 2016, respondent had submitted to Tracy a motion to vacate a judgment in connection with a foreclosure action. The motion identified respondent as the defendant's attorney. On September 26, 2016, respondent also filed a motion for substitution of attorney in the same

foreclosure matter. Neither of respondent's motions were addressed in court, because she had failed to pay the required filing fees.

On December 8, 2016, the OAE mailed (regular and certified) and faxed copies of the Tracy grievance to her. Although the fax was successfully delivered, the regular and certified mailings were returned to the OAE on December 28 and 29, 2016, respectively. Respondent failed to reply to the grievance.

Count Four

On November 9, 2016, Robert Schneider, Jr., an attorney with the Office of the United States Trustee, filed a grievance with the OAE, alleging that respondent had filed three cases in the United States Bankruptcy Court for the District of New Jersey while administratively ineligible to practice. The OAE confirmed that, on September 15 and 16, 2016, respondent had filed bankruptcy petitions in behalf of clients Margaret Kasprzak and David Simhony, respectively.

Schneider further alleged that respondent had filed a bankruptcy petition in behalf of client Thomas Fox, but had purposely omitted her signature from the document, to give the appearance that Fox had filed the petition pro se. The OAE confirmed that, in August 2016, Fox had retained respondent to

handle a home loan modification and to stay a foreclosure sale of his home, as set forth in a retainer agreement. Fox believed that respondent was diligently working on his behalf, until he received a court notice dismissing his "pro se" bankruptcy petition for failure to provide required documents and to pay filing fees. Fox informed the OAE that he had never made any pro se court filings, that respondent had ceased communicating with him, and that he had lost his home.

On December 8, 2016, the OAE sent the Schneider grievance to respondent by mail (regular and certified) and fax. The fax was successfully delivered, but the regular and certified mailings were returned to the OAE on December 15 and 19, 2016, respectively. Respondent failed to reply to the grievance.

Count Five

On December 20, 2016, the OAE docketed a grievance against respondent, based on a claim that Christine Gaskill had made to the CPF. In July or August 2015, Gaskill had retained respondent to handle her personal bankruptcy, and had paid respondent approximately \$1,560 toward the representation.

In July 2016, respondent and Gaskill were scheduled to attend a creditors' meeting held by the bankruptcy trustee. On the day of the meeting, respondent pulled her vehicle alongside

Gaskill's and told her that she needed to drive down the street, to her father's office, to print documents for the meeting; respondent then drove away and never returned. The creditors' meeting was never rescheduled, and Gaskill's petition ultimately was dismissed, due to respondent's repeated failure to attend scheduled bankruptcy proceedings.

Gaskill alleged that, after she paid respondent \$60 to convert her bankruptcy petition from Chapter 13 to Chapter 7, respondent failed to complete any work in her case. Between September 8 and October 3, 2016, Gaskill sent numerous text messages to respondent, requesting updates on her case and her case docket number. On October 4, 2016, respondent finally replied to her client's text inquiries, but failed to inform Gaskill that she had been suspended from the practice of law. Gaskill later learned of respondent's suspension from Stanger, the attorney-trustee.

On January 12, 2017, the OAE sent the grievance to respondent by mail (regular and certified) and fax. Although the fax was successfully delivered, the regular and certified mailings were returned to the OAE in January 2017. Respondent failed to reply to the grievance.

Count Six

On December 20, 2016, the OAE docketed a grievance against respondent, based on a claim made to the CPF by Kathleen Gad. In February 2016, Gad had retained respondent to handle both her personal bankruptcy and a pending sheriff's sale of her home, paying respondent approximately \$700 toward the representation. Gad was seeking an extension of the time allotted to vacate her home, due to her disability.

Gad and respondent communicated primarily through texts and phone calls, meeting in person for the first time at Gad's May 19, 2016 bankruptcy trustee meeting. Gad never received copies of the documents she had executed at the meeting, and experienced consistent trouble reaching respondent, who made various excuses regarding the lack of communication. Gad's petition ultimately was dismissed, due to a failure to complete a financial management course. Gad told the OAE that respondent never directed her to take the course, that respondent never told her the status of her case, and that she learned of the dismissal when the bankruptcy court sent her a dismissal letter.

Gad reached out to respondent a final time, on July 11, 2016, but never received a reply or a copy of her file. Gad lost her home, none of her debts were discharged, and she is financially unable to pursue another bankruptcy proceeding.

On January 12, 2017, the OAE sent respondent the grievance by mail (regular and certified) and fax. The fax was successfully delivered, but the regular and certified mailings were returned to the OAE in January 2017. Respondent failed to reply to the grievance.

Count Seven

On December 20, 2016, the OAE docketed a grievance against respondent based on a claim made to the CPF by Nicholas and Barbara Russo. In August 2015, the Russos had retained respondent to handle their personal bankruptcy, paying her approximately \$1,800 toward the representation. Respondent did not present them with a retainer agreement.

Respondent advised the Russos to cease making payments toward their debts, and to gather documentation regarding their credit card, tax, and mortgage debt. On September 3, 2015, Nicholas Russo met with respondent, discussed a budget analysis, and completed the analysis, at home, the next day, securing the required certificate of completion. After that meeting, the Russos' next contact from respondent occurred in October 2015, when she again advised them not to make payments toward their debts, in order to reduce their credit scores. As of November 2015, respondent had not filed the Russos' bankruptcy petition.

Although respondent claimed that she had been in the hospital, she provided no further explanation for her lack of progress on their matter.

In May 2016, after months with no communication from respondent, Nicholas Russo contacted another attorney to determine the status of their bankruptcy matter. He learned that respondent had never filed their bankruptcy petition. In June 2016, almost a year after the Russos had retained and paid respondent, attorney Brian Thomas filed a bankruptcy petition for the Russos, who paid Thomas \$1,300, in addition to the \$1,800 they had paid respondent. The Russos successfully completed their bankruptcy, with the assistance of Thomas.

On January 12, 2017, the OAE sent respondent the grievance by mail (regular and certified) and fax. The fax was successfully delivered, but the regular and certified mailings were returned to the OAE in January 2017. Respondent failed to reply to the grievance.

Count Eight

On December 20, 2016, the OAE docketed a grievance against respondent, based on a claim made to the CPF by Carol Rider. In August 2015, Rider had retained respondent to handle her personal bankruptcy, which was successfully completed in January

2016, despite respondent's frequent failures to attend appointments. Notwithstanding these concerns, Rider again retained respondent, in 2016, to file a second bankruptcy petition that sought to discharge back-tax obligations.

On June 26, 2016, pursuant to a retainer agreement, Rider paid respondent \$310 in cash and \$990 via check. On July 21, 2016, respondent filed the second bankruptcy petition in Rider's behalf, but failed to include required documentation. Respondent also filed an application to pay applicable filing fees via installments, although Rider had provided the full \$310 filing fee. Respondent made only two installment payments.

On August 5, 2016, respondent filed a motion requesting additional time to submit documentation required to support Rider's petition. Her motion was granted, yet she failed to submit that documentation. Consequently, on September 6, 2016, Rider's petition was dismissed. On September 13, 2016, the day after she was ordered administratively ineligible to practice law, respondent filed a motion to reinstate Rider's petition, and a hearing was scheduled for October 16, 2016.

On or about September 20, 2016, respondent informed Rider that another attorney would assume the representation, because respondent was in the hospital due to a spider bite. She did not inform Rider that she was ineligible to practice law. No

attorney assumed Rider's case. According to Rider, respondent was difficult to reach, and did not return telephone calls. Rider later learned, from attorney-trustee Stanger, of respondent's suspension. She hired another attorney, paying \$1,900 toward a \$3,000 fee, to file her bankruptcy petition.

On January 12, 2017, the OAE sent respondent the Rider grievance by mail (regular and certified) and fax. Although the fax was successfully delivered, the regular and certified mailings were returned to the OAE in January 2017. Respondent failed to reply to the grievance.

Count Nine

On December 20, 2016, the OAE docketed a grievance against respondent, based on a claim made to the CPF by Kimberly Hartman. In May 2016, Hartman had retained respondent to handle her personal bankruptcy. Respondent provided Hartman with a bankruptcy checklist, but no retainer agreement. Hartman designated her fiancé, Jeff Bourquin, as her proxy in communications with respondent.

On May 23, 2016, respondent failed to attend a scheduled meeting with Bourquin. That same date, Bourquin paid Bright, respondent's assistant, \$650 cash toward the representation. Shortly thereafter, respondent requested full payment of her

legal fee, citing a merger with a law firm, Cabrera and Associates. On June 11, 2016, Hartman and Bourquin, having borrowed money from family members, paid respondent an additional \$650, for a total fee of \$1,300.

According to Hartman, respondent was difficult to reach, and would often take a week to reply to texts or voicemails, if she responded at all. On October 4, 2016, Bourquin telephoned respondent, who told him that she was very busy, but failed to inform him of her suspension from the practice of law. On October 7, 2016, Bourquin learned from the OAE that respondent had been suspended. That same date, respondent called Bourquin, and misrepresented that her suspension was "not a big deal," but was just a "mix-up" relating to her former partnership.

On October 13, 2016, Hartman and Bourquin met with respondent, who advised Hartman to take a required financial management class. Although respondent told Hartman and Bourquin that she was addicted to pain medication, she disclosed neither her suspension from the practice of law nor the status of Hartman's bankruptcy filing. Throughout October 2016, Bourquin exchanged text messages with respondent, to determine the status of Hartman's bankruptcy proceedings. After respondent repeatedly canceled meetings with Hartman, Bourquin demanded that respondent refund her fee, which respondent failed to do. On

March 13, 2017, Hartman and Bourquin met with Stanger, the attorney-trustee, and secured a copy of Hartman's file, which revealed that respondent had not filed Hartman's bankruptcy petition. Hartman's financial issues remain unsolved. She cannot afford to hire a new attorney, and is facing threats of wage garnishment, due to her debts.

On January 12, 2017, the OAE sent respondent the Hartman grievance by mail (regular and certified) and fax. The fax was successfully delivered, but the regular and certified mailings were returned to the OAE in January 2017. Respondent failed to reply to the grievance.

* * *

The facts recited in the formal ethics complaint support all of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint 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)(1).

In respect of count one, on April 19, 2016, respondent overdrew the Weber and Perskie attorney trust account by \$249.03. From April 29 to August 2, 2016, respondent ignored the OAE's numerous attempts to obtain information about this overdraft. After Weber notified the OAE that the law firm had

been dissolved and that respondent was responsible for the trust account, the OAE sent four letters to respondent, all directing her to provide a detailed and documented explanation for the overdraft, and all to no avail.

Respondent also failed to appear at three scheduled demand audits. Finally, the OAE filed a motion for respondent's temporary suspension, which the Court granted on September 21, 2016. Thereafter, the OAE learned that respondent had closed both her attorney trust and business accounts. Respondent, thus, violated RPC 8.1(b) by failing to provide required documents to the OAE and by failing to appear at demand audits, culminating in her temporary suspension.

Because respondent had not produced the records required for the demand audit, the OAE subpoenaed her attorney bank records, which revealed that, during the relevant time frame, respondent had made numerous cash withdrawals, in "round amounts," from her attorney trust account. The subpoenaed financial records also revealed improper account designations on the attorney trust account statements, checks, and deposit slips, and checks and deposit slips lacking information required under the recordkeeping rules. By making cash withdrawals from her trust account, and failing to comply with R. 1:21-6, respondent violated RPC 1.15(d).

In respect of count two, on October 6, 2016, Atlantic County Counsel Ferguson alerted the OAE that respondent was practicing law while suspended. On September 15 and 29, 2016, respondent submitted letters of representation to the Atlantic County Sheriff's Department, in behalf of three clients, requesting the postponement of pending sheriff's sales. By practicing while administratively ineligible and while suspended, respondent violated both RPC 5.5(a)(1) and RPC 8.4(b). Moreover, respondent violated RPC 8.1(b) by her failure to reply to the grievance.

In respect of count three, on October 21, 2016, another grievant, attorney Richard J. Tracy, alleged that respondent was practicing law while suspended. On September 20, 2016, she submitted to Tracy a motion to vacate a judgment in connection with a foreclosure action. On September 26, 2016, she filed a motion for substitution of attorney in the same foreclosure matter. By practicing while administratively ineligible and while suspended, respondent violated both RPC 5.5(a)(1) and RPC 8.4(b). Moreover, respondent violated RPC 8.1(b) by failing to reply to the grievance.

As to count four, on November 9, 2016, the OAE learned from attorney Robert Schneider, Jr. that respondent had filed bankruptcy petitions while administratively ineligible to

practice. The OAE confirmed that respondent had filed bankruptcy petitions in behalf of clients Margaret Kasprzak and David Simhony, on September 15 and 16, 2016, respectively.

Schneider alleged that, while respondent was ineligible, she also filed a bankruptcy petition for Thomas Fox, but had purposely omitted her signature from the document, to falsely create the impression that Fox had filed the petition pro se.³ Fox later received a court notice dismissing his "pro se" bankruptcy petition, for failure to provide required documents and to pay filing fees. Fox had never filed documents pro se. Respondent had ceased communicating with him and he lost his home. By practicing while administratively ineligible and while suspended, respondent violated both RPC 5.5(a)(1) and RPC 8.4(b). Moreover, her conduct in Fox's matter violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Respondent also violated RPC 8.1(b) by her failure to reply to the grievance.

In respect of count five, in July or August 2015, Christine Gaskill retained respondent to handle her personal bankruptcy, and paid her approximately \$1,560 toward the representation.

³ Although respondent's deceptive bankruptcy petition, filed in Fox's behalf to convey the appearance that he represented himself, violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), the complaint did not charge respondent with having violated that Rule. We, therefore, are precluded from making such a finding. See R. 1:20-4(b).

In July 2016, respondent and Gaskill were scheduled to attend a creditors' meeting. Although respondent represented to Gaskill that she would appear at that meeting, she failed to do so. The creditors' meeting was never rescheduled, and Gaskill's petition ultimately was dismissed, due to respondent's repeated failures to attend bankruptcy proceedings. Respondent then failed to complete any work in Gaskill's case or to reply to Gaskill's numerous text messages requesting updates on her case and seeking her case docket number. On October 4, 2016, respondent finally replied to Gaskill's inquiries, but failed to inform Gaskill that she had been suspended from the practice of law. Respondent, thus, violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 5.5(a)(1), and RPC 8.4(b). Moreover, respondent violated RPC 8.1(b) by her failure to reply to the grievance.

In respect of count six, in February 2016, Kathleen Gad retained respondent to represent her in both her personal bankruptcy and a pending sheriff's sale of her home. After Gad's May 19, 2016 bankruptcy trustee meeting, Gad did not receive from respondent copies of the documents Gad had executed at that meeting, and had difficulty reaching respondent. Gad's petition ultimately was dismissed, due to a failure to complete a financial management course. Respondent had neither directed her to take the course nor told her the status of her case. Gad

learned of the petition's dismissal from the bankruptcy court.

As a consequence of respondent's actions and inaction, Gad lost her home, none of her debts were discharged, and she is financially unable to pursue another bankruptcy proceeding. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Moreover, by failing to respond to the grievance, she violated RPC 8.1(b).

As to count seven, in August 2015, the Russos retained respondent to handle their personal bankruptcy. Respondent's failure to set forth, in writing, the basis or rate of her fee violated RPC 1.5(b).

As of November 2015, respondent had not filed the Russos' bankruptcy petition. In May 2016, after months with no communication from respondent, Nicholas Russo contacted another attorney to determine the status of their bankruptcy matter and learned that respondent had not filed their bankruptcy petition. Almost a year after they had retained respondent, the Russos retained Brian Thomas, paying him \$1,300, in addition to the \$1,800 respondent had taken, to file their petition. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Moreover, respondent violated RPC 8.1(b) by her failure to reply to the grievance.

In respect of count eight, in 2016, Carol Rider, who had previously retained respondent in a bankruptcy matter, hired her to file another bankruptcy petition intended to discharge back-tax obligations. Although Rider gave respondent \$310 in cash and \$990 via check, respondent filed an application to pay filing fees via installments. She made only two installment payments. She filed the bankruptcy petition on July 21, 2016, but omitted required documentation. Although respondent obtained an extension to submit the documentation, she failed to do so, resulting in the September 6, 2016 dismissal of Rider's petition. On September 13, 2016, the day after she was declared administratively ineligible to practice law, respondent filed a motion to reinstate Rider's petition, and a hearing was scheduled for October 16, 2016. By practicing while administratively ineligible, respondent violated both RPC 5.5(a)(1) and RPC 8.4(b).

In addition, respondent was not accessible to Rider and did not return her telephone calls. She further failed to inform Rider of her suspension. Rather, Rider learned of respondent's suspension from Stanger. Consequently, Rider hired another attorney, paying \$1,900 toward a \$3,000 fee, to file her bankruptcy petition. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Moreover, she violated RPC 8.1(b) by her

failure to reply to the grievance.

In respect of count nine, in May 2016, Kimberly Hartman retained respondent to handle her personal bankruptcy. Although Hartman eventually paid respondent a \$1,300 fee, she failed to set forth, in writing, the basis or rate of her fee, and, thus, violated RPC 1.5(b).

On May 23, 2016, respondent failed to attend a scheduled meeting with Bourquin, Hartman's fiancé and designated contact person. In addition, respondent was not accessible to Hartman, and, when she replied to Hartman's communications, did so on a delayed basis. Furthermore, respondent failed to tell either Hartman or Bourquin that she had been suspended from the practice of law. Rather, Bourquin learned of respondent's suspension from the OAE. Respondent subsequently misrepresented to Bourquin that her suspension was the result of a "mix-up" relating to her former partnership, a violation of RPC 8.4(c).

Respondent met with Hartman and Bourquin on at least one occasion after her suspension, and, throughout October 2016, Bourquin exchanged text messages with respondent to obtain the status of Hartman's bankruptcy proceedings. By practicing while administratively ineligible and while suspended, respondent violated both RPC 5.5(a)(1) and RPC 8.4(b).

Respondent repeatedly canceled meetings with Hartman and failed to comply with Bourquin's demand that respondent refund her fee. Ultimately, Hartman obtained a copy of her file from Stanger and learned that respondent had not filed her bankruptcy petition. As a result, Hartman's financial issues remain unsolved, she cannot afford to hire a new attorney, and she is facing threats of wage garnishment due to her debts. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Moreover, respondent violated RPC 8.1(b) by her failure to reply to the grievance.

As set forth above, respondent engaged in a pattern of neglect in respect of her handling of the Fox, Gaskill, Gad, Russo, Rider, and Hartman client matters. She, thus, engaged in a pattern of neglect, a violation of RPC 1.1(b). In addition, respondent violated RPC 8.4(c) in all six of these client matters by her failure to inform her clients that she had been suspended.

In sum, respondent violated RPC 1.1(a) in all six client matters, RPC 1.1(b) for engaging in a pattern of neglect, RPC 1.3 in all six client matters, RPC 1.4(b) in all six client matters, RPC 1.5(b) in two client matters, RPC 1.15(d) for recordkeeping violations, RPC 5.5(a) in all six client matters,

RPC 8.1(b) on eight occasions, RPC 8.4(b) in all six client matters, and RPC 8.4(c) in all six client matters.

* * *

The sole issue left for determination is the proper quantum of discipline for respondent's misconduct. The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court, and appeared in a municipal court on behalf of a third client, after the Court had temporarily suspended him; the attorney also failed to file the required R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors were considered, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to financially support himself; prior three-month suspension); In re Bowman, 187 N.J. 84 (2006)

(one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and served as planning board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) ("Marra I") (one-year suspension for practicing law in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also was guilty of multiple misrepresentations to clients, gross neglect and pattern of neglect, negligent misappropriation, a conflict of interest, and failure to cooperate with disciplinary authorities);⁴ In re Marra, 183 N.J. 260 (2005) ("Marra II") (three-year suspension

⁴ In that same Order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension, also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20, and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office, and failed to cooperate with an ethics investigation; prior three-month suspension); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred in a default case for practicing law while

suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of these grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not notify them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two

three-month suspensions, and two six-month suspensions); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand).

To find a pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Respondent's misconduct clearly exceeds this threshold.

When an attorney is guilty of a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases

handled on behalf of an insurance company, gross neglect, and pattern of neglect).

Respondent is guilty of violating RPC 8.1(b) in numerous matters. Failure to cooperate with a disciplinary investigation generally results in an admonition, if the attorney does not have an ethics history (even when accompanied by other, less serious, infractions). A reprimand may result, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, who uncovers recordkeeping improprieties in a trust account and requests additional documentation, which the attorney then fails to provide. See, e.g., In re Picker, 218 N.J. 388 (2014) (an OAE demand audit, prompted by a \$240 overdraft in the attorney's trust account, uncovered the attorney's use of her trust account for the payment of personal expenses, although no trust funds were in the account at the time, a violation of RPC 1.15(a); in addition, the attorney failed to comply with the OAE's request for documents in connection with the overdraft and failed to appear at the audit, violations of RPC 8.1(b); the attorney explained that health problems had prevented her from attending the audit and that she had not submitted the records to the OAE because they were in storage at the time; although the attorney had a prior three-month suspension and was temporarily suspended at the time of

the imposition of discipline, we noted that the conduct underlying those matters was unrelated to the conduct at hand) and In re Macias, 121 N.J. 243 (1990) (the attorney ignored six letters and numerous phone calls from the OAE requesting a certification explaining how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

Finally, respondent committed recordkeeping violations and made misrepresentations to her clients. An admonition is the usual form of discipline for recordkeeping violations that do not result in the negligent misappropriation of client or escrow funds. See, e.g., In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances, failed to promptly remove earned fees from the trust account, and failed to perform monthly three-way reconciliations, in violation of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years without prior incident and that he had readily admitted his misconduct by consenting to discipline); In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were

unidentified; no prior discipline); and In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an OAE audit revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct).

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her from June 2009 through January 2011, and his failure to communicate with her, except on occasion, between January 2011 and April 2014, when the client filed a grievance; the attorney never informed his client that a motion to compel had been filed, that the court had entered an order granting the

motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (attorney assured his client that the matter was proceeding apace, and that the client should expect a monetary award in the near future, knowing these representations were false, thereby violating RPC 8.4(c); the attorney also engaged in gross neglect and lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3, and violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); In re Falkenstein, 220 N.J. 110 (2014) (attorney failed to inform the client that he had not complied with the client's request to file an appeal, instead leading the client to believe that he had filed an appeal, and concocting false stories to support the lies, a violation of RPC 8.4(c); the attorney failed to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; he failed to withdraw from the case when he believed the appeal was meritless, a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a));

and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that her two personal injury complaints had been dismissed, thereby misleading her, by his silence, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's mitigation of an unblemished thirty-four years at the bar was outweighed by his inaction, which left the client with no legal recourse).

Here, the default status of this matter is an aggravating factor. "A respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). The only mitigation we consider is respondent's lack of a disciplinary history.

We determine that the totality of respondent's misconduct demands a lengthy suspension. Like the attorney in Wheeler, respondent's practice of law while suspended is accompanied by other serious ethics infractions, including gross neglect, misrepresentations to clients, and repeated failures to cooperate with disciplinary authorities. There is no compelling mitigation, as considered in Brady and Bowman, to offset the

aggravating factors present and to, thus, reduce the length of suspension to be imposed.


In our view, a two-year suspension is the necessary sanction for respondent's unethical conduct in this matter. Moreover, given respondent's extensive misconduct, and her apparent admission of an addiction to pain medication, we determine to impose, as additional protective measures, three conditions on respondent's return to the practice of law in New Jersey. Specifically, prior to her reinstatement, respondent must provide proof of fitness to practice law, as attested by a mental health professional approved by the OAE, and proof of completion of courses in ethics and law office management. If reinstated, she must practice under the supervision of a proctor for a period of one year.

Member Gallipoli voted to recommend respondent's disbarment.

Vice-Chair Baugh and member Boyer 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: 
Eileen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nicole Leigh Perskie
Docket No. DRB 17-287

Decided: February 1, 2018

Disposition: Two-year Suspension

<i>Members</i>	Two-Year Suspension	Disbar	Did not participate
Frost	X		
Baugh			X
Boyer			X
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	1	2


Ellen A. Brodsky
Chief Counsel