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RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

ELLEN A. BRODSKY
CHIEF COUNSEL
PAULA T. GRANUZZO
DEPUTY CHIEF COUNSEL
MELISSA URBAN
FIRST ASSISTANT COUNSEL
TIMOTHY M. ELLIS
LILLIAN LEWIN
BARRY R. PETERSEN, JR.
COLIN T. TAMS
KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

February 28, 2018

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Erica Marie Scavone
Docket No. DRB 17-411
District Docket No. IX-2016-0003E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the District IX Ethics Committee ("DEC"), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate quantum of discipline for respondent's violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Board determined to dismiss the alleged violation of RPC 1.1(a) (gross neglect).

Specifically, respondent was admitted to practice in 2013. In January 2014, respondent began her employment with the law firm Bright & Sponder, in-house counsel for Citizens United Reciprocal Exchange (CURE), an automobile insurance company. She handled a large and demanding caseload of personal injury protection arbitrations and actions. In December 2014, after less than a year in her position, respondent was ticketed for driving while intoxicated (DWI) after a night out with friends. She tried to hide the incident from her employer, due to her fear that her employment would be terminated. During the next five months, respondent

appeared in court on multiple occasions, each time expecting the matter to be resolved. With each adjournment, respondent continued to keep the matter from her employer, believing it would be resolved with the next court appearance.

In April 2015, respondent entered a guilty plea and the judge suspended her driver's license for three months, through July 28, 2015. Respondent feared that, if she stopped submitting monthly mileage reimbursement requests, her employer would become aware of the circumstances leading to her driver's license suspension. Therefore, from April through July 2015, respondent submitted falsified monthly mileage expense reimbursement forms, and accepted those reimbursements from her employer.

In September 2015, Bright & Sponder discovered inaccurate mileage entries, and informed respondent that it believed a number of her entries had been falsified. At that time, she readily admitted the deception and offered to repay the excess amount she had received as reimbursement. The firm declined her reimbursement offer, but terminated her employment. Respondent remains willing to make repayment.

In mitigation, respondent submitted that, as both an undergraduate and a law school student, she was involved in a number of campus civic and charitable activities. In 2015 and 2016, respondent provided pro bono legal services for South Jersey Legal Services. From the outset of the investigation, she provided full and candid cooperation. She readily admitted her wrongdoing, accepted full responsibility for her actions, deeply regrets the incidents giving rise to the grievance, and has no ethics history. At the time of the misconduct, respondent was young and inexperienced. Additionally, as stated, she has offered to pay restitution and remains ready to do so.

Respondent admitted that, over the course of five months, she falsified mileage reimbursement forms to conceal the loss of her driver's license, stemming from her DWI conviction. Although respondent was not motivated by financial gain, but, rather by the fear of potential job loss if her employer discovered her driver's license suspension, she kept the monies received as a result of her false reporting. Respondent's misrepresentations violated RPC 8.4(c).

Despite her stipulation to the contrary, however, respondent did not violate RPC 1.1(a). That Rule is inapplicable, as it

pertains specifically to attorneys' conduct concerning client matters with which they are "entrusted." Therefore, the Board determined to dismiss that alleged violation.

In support of the recommended quantum of discipline (censure or less), the parties rely on In re Day, 217 N.J. 280 (2014), where the attorney was suspended for three months for violating RPC 8.4(c), in connection with his submission of false time entries indicating that he had attended depositions on fifty-one dates when he had attended only twenty depositions. Clients were billed based on the false time entries. Day's firm ultimately reimbursed those clients a total of \$123,050.49. In the Matter of Neil M. Day, DRB 13-244 (December 20, 2014) (slip op. at 13, 14). The Board distinguished the attorney's conduct from that of lawyers in more serious cases because he had attempted, albeit ineffectively, to correct the false time entries and had not intended to make misrepresentations to the client. Ibid.

In a similar case, In re Hecker, 109 N.J. 539 (1988), an attorney received a six-month suspension when, in his role as a part-time municipal attorney, he had prepared and submitted bills for services purportedly rendered to the township, certifying them to be accurate, when he knew otherwise. In the Matter of Laurence A. Hecker, DRB 85-419 (April 15, 1987). The bills totaled \$320,000, of which the township paid Hecker approximately \$280,000. In imposing a six-month suspension, the Court considered Hecker's previously unblemished disciplinary history and the passage of fifteen years since the misconduct had occurred. In re Hecker, supra, 109 N.J. 539.

In other cases, the Court has imposed disbarments where the false billing misconduct is coupled with more egregious violations and additional factors in aggravation. See, e.g., In re Denti, 204 N.J. 566 (2011) (attorney, while a partner at two law firms at different time periods, submitted false entries in the firms' time-keeping systems, in an effort to mislead them into believing that he had been performing legal work; his intent was to ensure the continuation of his agreed compensation); and In re Ort, 134 N.J. 146 (1993) (disbarment for attorney who, while representing a widow in settling her husband's estate, mortgaged the estate residence without his client's permission and then used that loan to take excessive and unauthorized legal fees). Here, respondent's conduct is easily distinguishable from that of the attorneys in Denti and Ort.

Most recently, in In re Perkel, 227 N.J. 458 (2017), an attorney received reciprocal discipline in the form of a three-month retroactive suspension following his two-year suspension in Pennsylvania. Perkel, who worked as an independent staff attorney, was paid \$40 per hour for his services, and billed clients at a rate of \$245 per hour. In the Matter of Benjamin H. Perkel, DRB 16-046 (September 22, 2016) (slip op. at 2). During a period of one year, Perkel performed 1,303 hours of work on behalf of one client, but billed that client 1,721.5 hours. Id. at 3. The client overpaid a total of \$49,752. Ibid.

Perkel admitted his misconduct, but offered that he was a low-level contract attorney who only had been recently admitted to the bar when the conduct occurred. Further, he self-reported the misconduct and intended to repay the firm for his unearned wages. Moreover, Perkel submitted documentation of several medical conditions and a violent event in his past that exacerbated his conditions. Id. at 7.

In assessing the proper quantum of discipline, the Board considered that, much like the attorneys in Hecker, supra, and Day, supra, Perkel inflated billable hours ultimately paid by clients. However, the overbilled amounts were significantly higher in Hecker (\$320,000) and Day (\$123,050.49) than in Perkel (\$49,752). Id. at 9. Here, although the amount of money at issue is unknown, we assume that the total was even less than in Perkel, since mileage reimbursement rates tend to be lower than an attorney's hourly rate billed to clients. Nonetheless, the Board noted that the firm's client was economically harmed.

Finally, the Board considered Perkel's youth and inexperience at the time of the misconduct. Although youth and inexperience do not serve to excuse misrepresentation, those factors weighed in favor of Perkel's ability to become a productive member of the profession particularly in light of his willingness to take responsibility for his actions, as evidenced by his self-reporting of his conduct, the contrition he expressed, and his stated intention to repay the firm for the unearned wages he had collected. Ibid.

Here, respondent's conduct did not harm any particular client, but, rather, her firm. Moreover, respondent's conduct occurred over a relatively short period of time – five months. Like Perkel, she was relatively young and inexperienced at the time of her misconduct. Respondent has expressed contrition, has offered to

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repay the monies she received, and seemingly has just as much potential to move forward from these circumstances as did Perkel. Therefore, on balance, the Board determined to impose a censure.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 16, 2017.
2. Stipulation of discipline by consent, dated November 6, 2017.
3. Affidavit of consent, dated October 2, 2017.
4. Ethics history, dated February 28, 2018.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

Encls.

c: (without enclosures)
Bonnie C. Frost, Chair
Disciplinary Review Board (e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (e-mail)
Loryn Lawson, Presenter
District IX Ethics Committee (e-mail)
Mark B. Watson, Chair
District IX Ethics Committee (e-mail)
Lourdes Lucas, Vice-Chair
District IX Ethics Committee (e-mail)
Joseph M. Casello, Secretary
District IX Ethics Committee (regular mail and e-mail)
Isabel McGinty, Statewide Ethics Coordinator
Office of Attorney Ethics (e-mail)
Erica Marie Scavone, Respondent (regular mail and e-mail)
Sonya Bright, Grievant (regular mail)