SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-053
District Docket Nos. VA-2014-0032E;
VA-2015-0006E; VA-2015-0008E;
VA-2015-0009E; and VA-2015-0018E

IN THE MATTER OF	:
KIMBERLY S. TYLER	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 19, 2018

Decided: May 14, 2018

John C. Garde appeared on behalf of the District VA Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for a three-month suspension filed by the District VA Ethics Committee (DEC). The five-count first amended complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of

neglect,[1] RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information), RPC 1.5(b) (failure to provide a client with a writing setting forth the basis or rate of the fee) and RPC 8.4(c) (conduct involving, dishonesty, fraud, deceit or misrepresentation). For the reasons expressed below, we determine to impose a six-month suspension on respondent.

Respondent was admitted to the New Jersey bar in 1990 and the New York bar in 1998. She maintains a law practice in Newark, New Jersey.

In 2011, on a motion for discipline by consent, respondent was reprimanded for gross neglect, pattern of neglect, and lack of diligence in six bankruptcy matters. She also failed to communicate with the clients, and communicated with a client whom

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[1] Count one of the first amended complaint is subtitled "(RPC 1.1: Competence)." Paragraph 61 of count one of the first amended complaint sets forth the provisions of both subparagraphs (a) (gross neglect) and (b) (pattern of negligence) of RPC 1.1. Paragraph 63 of that count charges that respondent's conduct "[rose] to the level of 'gross negligence' required to find a violation of RPC 1.1(a)." Although paragraph 64 does not specifically recite a violation of RPC 1.1(b), it charges that "respondent has repeatedly failed to take any steps to protect her clients' interests, failed to file requisite applications with the court, failed to make required appearances, and failed to respond to the clients' requests for information." In this context, we view the omission of a specific recitation of subsection (b) to be mere oversight and determine that respondent was on full notice that her conduct also violated RPC 1.1(b).

she knew or should have known had retained counsel. We considered, in mitigation, that respondent was struggling with diabetes and a mental health issue at the time of the misconduct and had an otherwise unblemished record since her admission to the bar. In re Tyler, 204 N.J. 629 (2011).

In 2014, respondent received another reprimand, again by consent, for failure to communicate with a client in a bankruptcy matter. Despite the client's requests for information, respondent ceased communicating with the client, and never informed him that a creditor had been added to the bankruptcy schedule, the debt had been discharged, and the bankruptcy was closed. The Court ordered respondent to submit, to the Office of Attorney Ethics (OAE), proof of fitness to practice law. In re Tyler, 217 N.J. 525 (2014).

In connection with this matter, on April 13, 2018, respondent filed a motion to supplement the record with two reports issued by Dr. Daniel Greenfield. We determined to grant respondent's motion and to receive Dr. Greenfield's reports under seal.

This matter was before us by way of an unusual procedure. At the DEC hearing, the presenter asserted that under R. 1:20-4(e), respondent waived her right to a hearing, because she failed to request one in her answer. Thus, respondent and the presenter entered into a stipulation of facts, which the presenter read into the record. Respondent stipulated to the authenticity and

admissibility of the Bates-stamped documents for each matter, which constituted her entire file in each of the matters under review. The stipulation, the documents from respondent's files in the five matters, and the presenter's and respondent's unsworn comments at the DEC hearing establish that respondent accepted fees from five clients, performed virtually no work in their matters, failed to communicate the status of the matters to the clients or misrepresented their status, was difficult to reach, and in some of the matters, failed to provide the clients with writings setting forth the basis or rate of her fee.

Respondent offered to admit into evidence certain e-mails that she had sent to the presenter. The presenter objected, noting that he had received "literally hundreds of emails" from respondent and, further, that the individuals to whom respondent referred in the e-mails were not identified and had no bearing on the matters before the DEC. The presenter also argued that the e-mails were not submitted within the time frames set forth in the case management orders.

Respondent maintained that the e-mails were relevant, as they constituted mitigation and represented a collection of "online reviews that clients had left" for her, which she compiled into one document. She omitted the clients' names to protect their

privacy and combined the reviews that she found on different websites.

The presenter objected to the admission of the "unattributed statements from unidentified clients regarding unrelated matters." Because respondent did not intend to call any character witnesses, the hearing panel chair determined to permit respondent to limit her testimony on mitigation to the eighteen mitigating factors listed in her answer and permitted her to read into the record her "on-line" reviews and character letters.[2] Although respondent did not do so, her various submissions were admitted into evidence.

The Penelope Holton Matter – Docket No. VA-2014-0032E

On August 15, 2013, grievant Penelope Holton retained respondent to convert a Chapter 13 bankruptcy proceeding into a Chapter 7 proceeding, for which she paid respondent $550. Respondent did not provide Holton with a retainer agreement or other writing setting forth the basis or rate of her fee.

Almost seven months later, on March 6, 2014, respondent sent a bankruptcy questionnaire to Holton to complete and return. By letter dated June 25, 2014, respondent promised to inform Holton

[2] The public member of the panel, a computer consultant, expressed concern over the authenticity of the reviews. The panel chair, nevertheless, determined to accept the documentation and to give it the appropriate weight.

when she became aware of additional information on the bankruptcy matter. The letter also informed Holton that respondent was "trying to stay off the phone to get more work done." Respondent added, "I have had a lot of court time so it is hard to be on the phone." Therefore, respondent directed Holton to either write to her or to e-mail her with new information.

In a June 26, 2014 e-mail, Holton stated:

> Maybe you did not understand me when I left the message on your phone [I no][3] longer will be using you as my attorney. A year is to [sic] long to sit around and [wait for] you to do something. I told you four weeks ago I needed this case to be [filed on the] 26th or the chapter 13 would be dismissed you said you would file before [then. I] checked the bankruptcy court you never even filed the case. . . . I will file in small claims court to get my five hund[red] dollars back. I will also be going to the lawyer discipline agency.
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> [Bates stamp HOL26.]

Respondent prepared a $1,525 bill, dated July 4, 2014, indicating that she had spent five hours and five minutes for her services as follows: one hour for four letters; fifty minutes for five telephone calls of ten minutes each; thirty minutes for document review; thirty minutes for the preparation of the bankruptcy questionnaire; fifteen minutes for e-mails; one hour for two in-person consultations; and one hour for document

[3] A portion of the exhibit was cut off.

preparation. The bill informed Holton that she was not entitled to a refund.

On July 4, 2014, Holton sent an e-mail to respondent, stating that she had filed charges against her for the return of her retainer and that respondent would receive a summons and complaint within a week.

According to the stipulation, "on or about July 2014," Holton informed respondent that she no longer wanted respondent to represent her in the bankruptcy matter. Respondent's July 12, 2014 letter to Holton confirmed that Holton had retained new counsel. Respondent's letter stated:

> Enclosed please find a payment of $35.00. The balanced [sic] due to you now is $515.00.
>
> So you are aware, I planned to file documents with the Court on June 25, 2014 in the evening. . . . I am an electronic filer, therefore, I can file documents with the Court 24/7. You panicked instead of trusting me to do what I promised I would. I listened to my messages before I filed the documents and learned that you had hired another attorney.
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> [Bates stamp HOL24.]

Respondent did not refund the full amount of Holton's retainer. Her file reflected that the only work she had performed on Holton's behalf was a Schedule F bankruptcy form - Creditors Holding Unsecured Nonpriority Claims.

The Gregory Anderson Matter - District Docket No. VA-2015-0006E

In June 2014, Gregory Anderson retained respondent for a Trenton, New Jersey municipal court matter. The Anderson file contained no retainer agreement or other writing memorializing the terms of the engagement. Respondent did not appear for an August 7, 2014 "court date." However, by letter dated August 11, 2014, respondent notified the court that she had previously sent a notice of representation and a request for discovery to the court, but had received neither discovery nor a notice scheduling "an appearance." Respondent's letter also requested that she be sent notice of a new trial date.

On December 16, 2014, respondent informed Anderson that she would no longer be able to represent him and advised him to retain new counsel.

In a letter dated December 22, 2014, addressed to the "Judge of the Municipal Court" in Trenton, respondent requested an adjournment of Anderson's trial date and asserted that she had advised Anderson to retain new counsel. The letter stated:

> I have mandatory continuing legal education courses to finish before the end of the year. I also have a frivolous grievance filed against me that I am in the process of responding to. Additionally, I have been working hard to finish Federal cases before the end of the year. When I was first hired, I did not anticipate all of these situations would arise.

> Furthermore, continuing to work on this case would be a financial hardship. I did not anticipate that this case would go to trial.
>
> Additionally, I have been recently made aware of a property damage issue involving the defendant. The defendant advised me on Friday that this case was dismissed. I was never made aware that this case was pending at all.
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> [Bates stamp AND24.]

Anderson requested a refund of the fee. On January 20, 2015, respondent sent a letter to Anderson, with the subject line "Re: Trenton Municipal Court Case Refund due: $800.00." The letter stated "I do not have any funds to send you now but as soon as I have income I will send a payment. For your inconvenience, I will be sending you a total of more than what I owe you."

Respondent's March 16, 2015 letter/bill, stated, however: "Dear /client: I do not owe you a refund and I do not have any funds." According to the bill, Anderson owed her $1,700: $100 for "over" ten text messages; $200 for "over" five phone calls; $800 for a court appearance "by per diem attorney;" $100 for notice of representation to court; $100 for reviewing documents (there were no documents in the file to review); and $200 for an in-person meeting.

At the DEC hearing, respondent claimed that a fee arbitration determination required her to reimburse Anderson $650, which she paid, in installments because she could not afford to repay him

all at once. Although respondent offered no proof of the repayment, she, nevertheless, urged the hearing panel to consider it as a mitigating factor.

The Jose Soriano Matter – District Docket No. VA-2015-0008E

In January 2014, Jose Soriano retained respondent for representation in a personal injury and "assault matter," for which he paid her $3,000 in two installments – one on January 31 and the other on February 24, 2014.[4] Soriano executed a retainer agreement for a "UPS" case. Respondent did not file a complaint on Soriano's behalf.

Almost a year later, on December 18, 2014, Soriano's son terminated respondent's representation and requested a refund of his father's retainer. By letter of the same date, respondent refused to refund the retainer.

Notwithstanding the numerous e-mails and other correspondence between respondent and Soriano, respondent's file did not contain evidence of any substantive work. Rather, among the contents of the file were: numerous letters from respondent informing Soriano that she was working on his case; Soriano's replies and requests for updates on the status of his case; and a copy of the "Lawyer's

[4] Because English was not Soriano's first language, he authorized his son and niece to assist in his communications with respondent.

Prayer;" and a nineteen-item list of the "results" respondent purportedly achieved on "various cases."

In a letter dated December 17, 2014, Soriano's son wrote to respondent:

> Why do you avoid the main issue here – you are not delivering the services you promised!
>
> I don't need a JD (which I am seriously questioning where yours came from) to tell you that there is no case here because you told my father not to file a police report! You stated "you would take care of it", whatever that meant. That is the basis for any case of a battery incident! . . . . [You] have not even spoken with my father once since February 2014. As any respectable lawyer will tell you, that is highly unethical and suspicious for a counsel to meet with his/her client only once a year. You don't answer your phone, you don't allow in-person visits, but most importantly you haven't provided concrete updates—despite numerous requests to do so. **Therefore email is the only means to tell you to refund $3,000 that you basically stole from him.**
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> . . . The amount of work you have put has not equaled the $3,000 you have charged my father. . . . If you do not comply by the date we have requested then we will see you in court as well as file a second grievance against you, which will make the case of you being an unethical attorney even more insurmountable.
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> [Bates stamp SOR59.]

In a December 17, 2014 e-mail, Soriano himself complained that, in more than nine months, respondent had not achieved any results, had not phoned him, and had no office appointment with

him. The "meager" letters she had sent him were unacceptable, and he demanded a refund, by December 26, 2014.

In a December 18, 2014 reply, among other things, respondent informed Soriano that he would not be receiving a refund of his retainer because she had spent too much time on the case and, if he continued to pursue a full refund, she would be "forced to file criminal charges for theft of services which may entail jail time depending on your prior criminal record."[5]

The Wanda Crumel Matter – District Docket No. VA-2015-0009E

In March 2012, Wanda Crumel retained respondent for a real estate partition matter, for which they entered into a retainer agreement. On March 27, 2012, Crumel paid respondent a $7,500 fee.

Respondent did not file a complaint on Crumel's behalf. Rather, over a period of more than two years, from April 2012 to July 2014, respondent misled Crumel that she was working on the matter. Although respondent and Crumel exchanged a significant number of e-mails and letters, none addressed the substance of any work that respondent was performing on Crumel's behalf.

In an April 13, 2012 letter, Crumel complained that she had called multiple times over several days to schedule their meeting

[5] The complaint did not charge a violation of RPC 3.4(g) (threatening to present criminal charges to gain an improper advantage in a civil case).

that day, which respondent ultimately cancelled. Crumel found it impossible to reach respondent, noting that: (1) respondent's contact information on her website was not current – the e-mail and phone number were incorrect; (2) her voice mailbox was always full, but when she was able to leave a message, respondent did not always return her calls; and (3) she had believed that respondent would begin the partition paperwork immediately, but discovered that her case had not progressed at all.

Later that day, via e-mail, Crumel terminated respondent's services and requested a refund of the $7,500 fee, less $100 as a consultation fee.

By letter dated April 15, 2012, respondent asserted that she worked on Crumel's case every day and would schedule an appointment with her when she could, adding that she had been slightly injured in a car accident. In an April 17, 2012 letter, respondent informed Crumel that, by April 30, 2012, she would forward an accounting of the time she spent on the partition case.

In an April 23, 2012 letter, respondent stated that she was insulted that Crumel believed that respondent was entitled to only $100 for her services. She claimed that Crumel's retainer had been exhausted, and that she was not entitled to a refund. Respondent itemized $11,400 in services rendered, including (1) an initial thirty-minute consultation; (2) one hour to review Crumel's

documents; (3) ten hours of research; (4) one hour to prepare draft documents; (5) fifteen minutes of telephone calls (6) – (10) four hours and ten minutes to review draft documents, issues in the case, the relevant statute, and relevant case law; and (11) forty-five minutes on status letters to Crumel. Respondent offered to continue to work on the case at no additional charge. Respondent sent Crumel a similar accounting on June 25, 2012. The June letter informed Crumel that they would be in court within four to six weeks.

Meanwhile, in an April 30, 2012 letter, respondent notified Crumel's relatives that they soon would be sued for partition of real estate that they owned jointly with Crumel. As a result, believing that respondent had begun working on her case, Crumel e-mailed respondent on May 24, 2012, that she would refrain from dismissing her, if she saw progress on her case. As of that time, respondent still had not filed a partition action with the court.

On October 2, 2012, after additional communications and Crumel's inquiries about the status of the case, respondent wrote to Crumel, stating that she was still preparing a reply to Crumel's lengthy e-mail and to "[e]xpect a gift in the mail to show my appreciation for you hiring me and my appreciation for your patience." Via November 2 and November 15, 2012 letters, respondent asserted that she still was preparing Crumel's case for litigation,

did not want to make mistakes and, therefore, was proceeding carefully and cautiously, rather than rushing to court.

In a February 16, 2013 e-mail, Crumel complained that, after ten months, she had no proof of any activity on her case, which she understood would take two years to complete after the partition complaint was filed. Crumel wrote:

> You expect me to accept that there has been activity on my case without any proof just your word and that is not good enough for me. It is as though I gifted you my hard earned money. . . . [I]t is also unacceptable for you to tell me that you are working on my case and thinking about it every day and I have no proof to confirm this.
>
> I have been patient long enough, please give me tangible proof that my case is being worked on by the end of the month.
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> [Bate stamp CRU145.]

By e-mail dated February 27, 2013, respondent agreed to refund Crumel's retainer, stating, "[y]ou don't have to file a complaint. I'm just trying to be careful on all my cases including yours. I will give you extra for being patient. I'm not a bad person. I'm just trying to follow the rules." In a February 28, 2013 e-mail, respondent wrote that she would send as big a refund payment as she could within the next few days, but the "[b]ottom line I'm broke."

On March 1, 2013 Crumel e-mailed respondent that she should not have taken the case. Crumel had given respondent fees that she

could not afford to lose and was required to hire another lawyer to do the job for which she had hired respondent. She requested an expedited refund, adding, "[a]s stated before I am very unhappy as to how my case was handled and will take action to ensure no one else goes through what I have been through. Since I think the Barr [sic] association will not consider I have a case if you refund my money I will not pursue a complaint if I am refunded the retain [sic] next week."

That day, respondent replied that, if she lost her license as a result of Crumel's complaint, she would be unable to earn funds to repay Crumel.

According to the stipulation, respondent neither refunded Crumel's retainer nor turned over her legal research, which Crumel had requested, claiming "some sort of privilege."

The "Fee Arb" Matter – VA-2015-0018E

On February 23, 2015, the District VA Fee Arbitration Committee (FAC) referred to the DEC a matter it had heard concerning a domestic violence case.

On May 8, 2013, the client had retained respondent to represent him in connection with a domestic violence restraining order, for which he paid a $500 retainer. Respondent's file did not contain a written retainer agreement. According to respondent,

she previously had represented the client in a bankruptcy matter and, therefore, did not provide him with a retainer agreement for the restraining order matter.

Because respondent failed to attend the May 20, 2013 domestic violence hearing, the client requested a refund of his retainer. Respondent did not issue a refund, which prompted the client to file for fee arbitration in June 2013.

According to the FAC determination, on the eve of the domestic violence hearing, a Sunday night, respondent informed the client that she would not appear in court, citing a family medical emergency. She made no effort to contact the court, and never entered an appearance in the matter. The client appeared, and explained to the court that respondent would not appear. Although the court offered the client an adjournment, he elected to appear pro se, because he could not afford to miss another day from work. The court dismissed the restraining order. According to the client, respondent never met him at her office, but only in a restaurant parking lot, and she failed to return his calls.

After the court hearing, the client sought a refund of the retainer, to which respondent agreed. However, she reneged on her agreement, sending him only a $10 money order. On October 25, 2013, the FAC determined that the client was entitled to a full refund, within thirty days of the order. Respondent made small

partial payments to the client over a seven-month period, paying off the balance on June 20, 2014.

* * *

Following the entry of the stipulation, respondent moved to dismiss the complaint, based on insufficient evidence to establish, to a clear and convincing standard, that she had acted unethically. As to the substance of her motion, respondent maintained that, in those matters in which she provided her clients retainer agreements, the agreements did not impose deadlines for filing complaints, and she did not miss the statute of limitations in any of the civil matters. In addition, the retainer agreements established that the clients were to pay filing fees, which they had not done.

The presenter argued that respondent's refund of her fee did not affect whether an ethics violation occurred. He further contended that respondent lacked standing to make the motion, because she had failed to request a hearing. He moved for a directed verdict. The DEC denied respondent's motion to dismiss the complaint.

In a somewhat rambling brief to the DEC, respondent attempted to supplement the record with facts not presented during the hearing.[6]

[6] The submission contained numerous spelling and grammatical errors, not all reproduced in this decision.

In the Holton matter, respondent appeared to blame her conduct therein on her grief over the death of her roommate's mother, whom she considered an aunt. In Anderson, respondent accused the grievant of lying about the dismissal of his case. In the Soriano matter, respondent claimed that she performed research in the matter because pre-litigation research is important and "helps you to be prepared to settle the case before filing suit." She further claimed that Soriano's son was abusive, and she believed that he drafted the abusive e-mails. She was unable to locate contact information for Soriano's doctors that she had previously received, and alleged that Soriano refused to resend the information and would not cooperate with her. She wrote:

> Not every case is meant to be prepared quickly. Nancy from . . . reminded me that there is no deadline in retainer agreement and I should not treat everything as an emergency. That is why the statute of limitations is 2 years for personal injury. Grievant terminated my services before statute of limitations expired.
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> [RB4.][7]

Respondent apparently blamed her communication problems with Crumel on the fact she had three phone numbers for Crumel and did not know which number was correct.

> Clients think if I do not answer the phone immediately when do in the phone [sic] when they call that I am dodging them. This is not true. I have many responsibilities. I have other clients

[7] RB refers to respondent's April 15, 2017 submission to the DEC.

> I may be talking to on the phone or in person. I may be in court. I may be at the post office or at the bank. I may be at FEDEX. There is a lot to do in the course of a day.
>
> [RB4.]

Respondent claimed further that, because there were no fee arbitration determinations in Crumel, Soriano, or Holton, there was no finding on whether she had earned her fees. As to the fee arbitration matter, respondent stated that she wanted to keep half of the fee because she "confirmed that his strategy was correct and he obtained a dismissal. I knew the court would give him an adjournment since I wasn't there."

Respondent maintained that there was no clear and convincing evidence of her incompetence. She did not cause any loss and Crumel did not prove that she would have won her case if respondent had filed it; Soriano did not cooperate by not providing his doctors' contact information; and her representation in Soriano was terminated before the statute of limitations expired.

Respondent argued further that there was no proof that she was not diligent. She was a solo practitioner who had no other help, worked fifteen hours a day, and communicated with clients on weekends and evenings, "and during the days."

Finally, although the remainder of respondent's submission is equally difficult to understand, she denied failing to communicate with clients or making misrepresentations to them.

The presenter moved to exclude respondent's submission, based on the "plethora of new factual allegations" set forth therein, which were not supported by the stipulation. Moreover, the presenter asserted that the entire submission was irrelevant to its intended purpose, to address issues of mitigation and sanction; the submission did not contain sworn facts, and respondent, who decided not to testify, could not use her submission as an attempt to provide testimony to contradict the stipulation. Respondent opposed the presenter's motion, arguing, among other things, that the stipulation was not "detailed."

On May 17, 2017, the panel chair determined to consider respondent's submission, but not the new facts raised therein, as respondent had a full opportunity to negotiate and review the terms of the stipulation, which she freely entered.

Some of the forty-nine mitigating factors respondent urged the DEC to consider were: (1) she gives money to the poor and to her church; (2) she helped friends who were not working and needed food; (3) she helped "a lot of people . . . at reasonable costs;" (4) a former bankruptcy judge said she was "his favorite lawyer," and others commended her on her performance; (5) she prays every day; (6) she did not think she committed ethics infractions – "simply because a client complains does not mean a complaint must be filed;" (7) she should not be suspended because she does not have the funds readily available to refund retainers; (8) she read a case "years ago which held that there

was no discipline for bad records. It was a NJ case. I cannot find the citation;" (9) "to err is human, to forgive divine;" (10) during her first ethics case she was hospitalized due to stress, but "no illness in close to a decade;" and (11) there were no character letters for the grievants. An additional exhibit began, "[l]et me tell you about myself" and concluded with "that lets you know that I can be trusted." Also included was a list of twenty-one types of cases that she has handled; several character letters from 2009, 2015, and 2016 (before this matter arose); testimonials from unnamed clients; and numerous e-mails to the panel chair. For example, two e-mails dated June 20, 2017 stated: "I am a quiet and sensitive person. I was not raised in a household with yelling and confrontational conversation;" and "I like to read, learn, think and plan."

On June 21, 2017, the panel chair replied, "[the presenter] and I cannot continue to receive 3 or 4 emails a night from you on these matters. . . . [Y]our emails and submissions are getting repetitive at this point. I and my fellow panel members understand your position on mitigation and it will be considered."[8]

[8] Although respondent also communicated with the Office of Board Counsel on an ex parte basis on several occasions, those submissions were not forwarded to us for review or consideration.

The DEC found that respondent engaged in gross neglect, lack of diligence, and failure to communicate with clients in all five matters.[9] Indeed, the DEC found that respondent engaged in a pattern of these violations.

The DEC summarized that, in the Holton matter, the file contained no work product and respondent took no action to convert the client's Chapter 13 bankruptcy to a Chapter 7 bankruptcy. Moreover, a gap in communication spanned almost seven months.

In Anderson, respondent's file showed some initial activity, but virtually nothing further for a five-month period. The DEC found particularly troublesome respondent's "abandonment" of the client "approximately one week before his trial date," and respondent's failure to notify the court, until the morning of the trial, that she would not appear.

In the Soriano matter, the DEC found that, after collecting the $3,000 retainer, respondent took no action to pursue the client's personal injury matter. In addition to large gaps of time between her communications with Soriano, when she did communicate, it was often to mislead him about the status of his case.

Similarly, in the Crumel case, respondent obtained a $7,500 retainer to file a partition action, but was unable to produce any evidence that she had researched the relevant issues, prepared

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[9] The hearing panel report mistakenly cites RPC 1.3 twice.

pleadings, or filed documents with the court. As in Soriano, the communications documented in respondent's file established Crumel's concerns about the lack of progress in her matter and respondent's misrepresentations to Crumel that she continued to work on the matter.

Finally, in the fee arbitration matter, respondent accepted a fee, did nothing on the client's behalf, and failed to communicate with the client.

The DEC found that respondent made misrepresentations in four of the matters regarding their status and the quantum of work performed. The DEC did not find that respondent misled the client in the fee arbitration matter, however.

The DEC determined that respondent failed to provide writings setting forth the basis or rate of the fee in three of the five matters, excluding Soriano and Crumel, who each received a retainer agreement.

The DEC found, as an aggravating factor, respondent's disciplinary history. Addressing respondent's mitigation, the DEC wrote:

> The submission lacks coherency and is best described as a series of comments numbered 1 through 42. Some of these comments, at least arguably, have a bearing on the matters in the Amended Complaint and the issues before the panel. Some, however, are simply bizarre and have nothing to do with anything before us.
>
> If one had to describe the overall tone of the document, it would be that [respondent] believes that she is a good person and that she would not be dealing with these ethical issues if she had more money to refund her clients. The submission contains no acknowledgment from [respondent] that

> she failed to perform the work she was retained to accomplish. . . .
>
> Over the next two weeks, [respondent] continued to submit materials, arguably on the issue of mitigation. . . . [A]mong the documents are a "Let me tell you about me myself [sic]" that may or may not have some bearing on the issues before the Panel. Many of the emails were sent between the hours of 11:00 p.m. and 5:00 a.m.
>
> [HR12.][10]

The DEC found that respondent was neither malicious nor intent on defrauding her clients. Rather, the DEC believed that she may be dealing with some form of undisclosed personal issue, negatively impacting her ability to practice law. In support of its belief, the DEC pointed to (1) the lack of disciplinary history in respondent's first twenty years at the bar, but at least ten ethics matters in the last seven years; and (2) the nature of respondent's submissions and communications, including many one-sentence comments sent in the early morning hours that had no bearing on the issues.

Based on the foregoing, the DEC recommended a three-month suspension; proof of fitness to practice law by an OAE-approved mental health professional; counseling, treatment, or therapy, if so recommended, and quarterly reports regarding treatment status;

[10] HR refers to the July 25, 2017 hearing panel report.

a proctor for at least two years; and full restitution to the grievants who had not yet been reimbursed.

* * *

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

It is a well-settled principle that the primary purpose of disciplinary proceedings is "to protect the public from unfit lawyers and to promote public confidence in our legal system." In re Gallo, 178 N.J. 115, 122 (2003). Clearly, the public needs protection from this attorney. Although no proof was presented that respondent's misconduct stemmed from any evil motive, her submissions call into question her current ability to competently represent clients. We base this conclusion not only on the DEC's observations but also on Dr. Greenfield's reports, which respondent moved to make a part of this record.

Notwithstanding the question of her mental status, respondent engaged in a pattern of misconduct in five client matters. She failed to provide clients Holton, Anderson, and the client in the fee arbitration matter with writings setting forth the basis or rate of the fee, a violation of RPC 1.5(b). In each of the five matters, she accepted retainers and then did nothing over the

course of months, instead evading her clients and misrepresenting the status of their cases, violations of RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), and RPC 8.4(c). The only evidence of any substantive work performed in the matters was a Schedule F bankruptcy form in the Holton matter and a photocopy of a blank form complaint for partition, in the Crumel matter.

In addition to the above violations, in one instance, respondent threatened to file criminal charges against Soriano, if he pursued a refund of the retainer. Although respondent was not charged with a violation of RPC 3.4(g), we note that paragraph 31 of the amended ethics complaint specifically alleged that, "[a]t one point, Respondent advised that 'too much time had been spent on the case' to permit a refund and threaten[ed] to 'file criminal charges for theft of services' and seek jail time if Grievant Soriano did not withdraw his request for a refund." The complaint, however, characterized respondent's threats as a "misrepresentation of the status of the law." Thus, because the complaint did not charge a violation of RPC 3.4(g), we make no finding in that regard. See R. 1:20-4(b).

In sum, we find that respondent is guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b) in all five matters; RPC 1.5(b) in three matters; and RPC 8.4(c) in four matters. In addition, based on respondent's pattern of neglect in all five matters, we find

respondent guilty of violating RPC 1.1(b) as well. The only issue left for determination is the proper quantum of discipline for respondent's combination of violations. The following cases, although not squarely on point, provide a point of comparison.

A reprimand was imposed in In re Tinghino, 210 N.J. 250 (2012), where the attorney was guilty of lack of diligence, gross neglect, and failure to adequately communicate with the client. The attorney, an associate, was assigned a case that involved legal issues with which he was unfamiliar. Instead of seeking advice from a superior, he filed a complaint in the wrong court. After the case was dismissed, rather than re-file the complaint in the proper forum, he took no further action over an eleven-month period. In the Matter of Lawrence M. Tinghino, DRB 11-384 (April 24, 2012) (slip op. at 7-8).

Thereafter, the attorney engaged in a series of lies to "obscure" the actual status of the case. Rather than tell the client that her case had been dismissed, he sent her a fabricated release for an alleged settlement, and wrote two letters to third parties to mislead them to believe that they could expect funds shortly from the non-existent settlement. Id. at 9.

We considered as mitigation that the attorney had no prior discipline, he self-reported his misconduct to disciplinary authorities, set about to make the client whole, and expressed

remorse for his wrongdoing. Aggravating factors were the attorney's numerous misrepresentations to the client about the status of the case, the documents he fabricated even though he was not charged with a violation of RPC 8.4(c), and his own negotiation of a restitution agreement with the client, without advising her to obtain separate counsel. Id. at 15-16.

A three-month suspension was imposed, on a motion for discipline by consent, in In re Brollesy, 217 N.J. 307 (2014). Brollesy was guilty of violations similar to respondent's (RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c)). The attorney misled a client to believe that he had obtained visa approval for a top-level executive so he could begin working in the United States. Although the attorney filed the application for the visa, he took no further action on it and failed to keep the client informed about the status of the matter. To conceal his inaction, he lied to the client, forged a letter purporting to be from an official U.S. embassy, and forged a signature of an alleged U.S. consul. Mitigation included the attorney's lack of an ethics history in his twenty years at the bar and his ready admission of wrongdoing by entering into a disciplinary stipulation.

The above two cases are distinguishable in that only one client matter was involved and neither attorney had an ethics history. Longer suspensions have been imposed on attorneys, some

of whom had ethics histories and engaged in a number of ethics violations in multiple matters. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of the matters, failed to communicate with clients in five matters, grossly neglected four matters, and failed to turn over the file upon termination of the representation in three matters; in addition, in one of the matters, the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in another matter, the attorney misrepresented the status of the case to the client; the attorney also was guilty of a pattern of neglect and recordkeeping violations; no ethics history); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters; failed to cooperate with the investigation of the grievances; and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney's ethics history included two reprimands); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with

clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged, requiring proof of fitness prior to reinstatement; no ethics history); In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; the attorney previously had been reprimanded); and In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including gross negligent, lack of diligence, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had

two prior admonitions, failed to recognize his mistakes, and blamed clients and courts for his ethics problems).

Here, although respondent was not charged with fabricating documents, her conduct was clearly more serious than Brollesy's, who received a three-month suspension for misconduct in only one client matter, and who had no ethics history. Thus, based on respondent's ethics history consisting of two reprimands for similar misconduct, and the number of client matters (five) involved, we determine that a six-month suspension is warranted.

In light of the DEC's observations, as well as the reports of Dr. Greenfield, now a part of the record, we determine that, prior to reinstatement, respondent must provide proof of fitness to practice law, as attested to by an OAE-approved mental health professional, as well as proof that she has completed a law office management course and four hours of courses in professional responsibility, in addition to those required of all attorneys to fulfill their continuing legal education obligations.

We also determine that, upon reinstatement, respondent should practice law under the supervision of an OAE-approved proctor until further Order of the Court.

Members Gallipoli and Zmirich voted to impose a one-year suspension, along with the same conditions. Members Boyer and Joseph did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kimberly S. Tyler

Docket No. DRB 18-053

Argued: April 19, 2018

Decided: May 14, 2018

Disposition: Six-month Suspension

Members	Six-month Suspension	One-year Suspension	Did Not Participate
Frost	X		
Boyer			X
Clark	X		
Gallipoli		X	
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich		X	
Total:	5	2	2

Ellen A. Brodsky
Chief Counsel