

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-036
District Docket Nos. VA-2014-
0017E;
VA-2014-0018E; VA-2014-0023E;
VA-2014-0026E; VA-2015-0011E;
VA-2015-0012E; VA-2015-0014E;
VA-2015-0016E; VA-2015-0034E; and
VA-2016-0015E

IN THE MATTER OF
JOAN OTHELIA PINNOCK
AN ATTORNEY AT LAW

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Decision

Argued: June 21, 2018

Decided: July 30, 2018

Sam Della Fera, Jr. appeared on behalf of the District VA Ethics Committee.

Robert J. De Groot appeared on behalf of respondent.

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

This matter was before us by way of a disciplinary stipulation between the District VA Ethics Committee (DEC) and respondent. Respondent admitted violating RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4 (presumably (b) (failure to communicate with the client)); RPC 5.1(b) (failure to supervise); and RPC 8.4(c)

(conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons stated below, we determined to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1997. She maintains a law office in Newark, New Jersey.

On October 17, 2013, respondent received a reprimand for failure to communicate with her client, lack of diligence, and failure to protect her client's interests upon termination of the representation in an immigration and a matrimonial matter. She also failed to memorialize the rate or basis of her fee, in writing, in the matrimonial matter. In aggravation, we considered that respondent had failed to return a filing fee and that her misconduct put her immigration client's freedom in jeopardy. In re Pinnock, 216 N.J. 405 (2013).

On January 12, 2018, respondent and the DEC entered into a disciplinary stipulation, which encompasses ten client matters.

The Theophilus Stephens Matter (VA-2014-0017E)

On November 1, 2012, Theophilus Stephens retained respondent to represent him in a divorce action. The retainer agreement required a fee of \$1,500, plus reimbursement of

expenses. In total, Stephens paid \$1,000 plus \$250 for filing fees.

Several months later, on March 14, 2013, Stephens executed the certification accompanying the divorce complaint. Respondent's office then sent the pleadings to the New York Supreme Court, Nassau County, for filing. On May 6, 2014, the papers were returned to respondent's office because they did not include an original signature. Respondent's office "purported" to re-submit the pleadings with an original signature, on May 13, 2013. Those papers, however, were not stamped "received" by the Nassau County court until September 6, 2013, nearly four months later.

Three weeks later, on September 26, 2013, respondent's paralegal sent the filed pleadings to the sheriff's office in Alabama for service. On October 29, 2013, nearly one year after Stephens had retained respondent, the pleadings were returned because the sheriff in Alabama could not find an address for service in the county. The sheriff's office had "called [respondent's] office and left a message but [had] not heard back from anyone."

From the fall of 2013 through May 2014, respondent failed to accept or return Stephens' phone calls seeking status updates for his matter. Stephens received promises and assurances from

members of respondent's staff, including her secretary and associate, that his matter was being handled. Eventually, in May 2014, Stephens hired new counsel.

Stephens' divorce complaint was dismissed for lack of prosecution. Respondent never obtained the divorce judgment for which she had been retained and paid. This failure adversely affected Marsha Smith, Stephens' fiancée, who had retained respondent in a related matter described below.

The Marsha Smith Matter (VA-2014-0018E)

On April 14, 2012, Marsha Smith retained respondent to obtain an adjustment of her immigration status and a waiver of inadmissibility. The retainer agreement required a fee of \$3,500, plus filing fees. Smith paid respondent a total of \$2,250.

On July 27, 2012, respondent filed an I-601 Application for Waiver of Grounds of Inadmissibility. On August 7, 2012, the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services Department (USCIS) returned the application because the "A number" provided was not located in its system. Respondent explained to Smith that, "the rejection was in error." Instead of correcting the filing, however, respondent advised Smith to marry her fiancé, Stephens (also respondent's

client as stated above), with whom she had two children. Respondent further advised Smith that, after the marriage, they could re-file the waiver application together with an adjustment of status application.

Similar to the Stephens matter, over the course of many months, respondent and her staff became unresponsive to repeated requests for information about the status of Smith's matter. In addition to her failure to obtain the divorce judgment for Stephens, respondent neither resubmitted the waiver of inadmissibility application for Smith, nor filed her change of status application.

The Patricia Campbell Matter (VA-2014-0023E)

In June 2012, Patricia Campbell retained respondent to submit a Form I-485 Adjustment of Status Application for her, with her daughter as the petitioner. At their initial meeting, Campbell paid respondent \$3,290 toward the total legal and filing fees of \$4,490, required by the retainer agreement.

Campbell submitted to respondent all of the necessary documents for the I-485 application. According to the stipulation, it "does not appear that the application was ever filed." Respondent suggested that Campbell submit a new Freedom of Information Act (FOIA) request for her complete alien file,

because her prior request had been submitted in Campbell's former name, which she changed when she married. Although Campbell provided all of the necessary FOIA documents, respondent never filed the FOIA request.

After approximately two months, Campbell sought a status update on the FOIA request from respondent, who replied that she had submitted the application and was awaiting a reply. Over the next several months, Campbell received the same answer from respondent and then, eventually, received no responses at all. Respondent was unresponsive to Campbell and did not perform any substantive services for which she had been paid.

The Arthur Esposito Matter (VA-2014-0026E)

On July 28, 2007, Arthur Esposito retained respondent to obtain permanent resident status for two employees at his company, A.C.E. Contracting Company. Esposito paid respondent \$22,000 for services that she never performed.

Employee Juan Perez Santamaria

In May 2011, respondent obtained approval of an ETA Form 9089 for Juan Perez Santamaria, but then failed to timely submit Form I-140 (Immigrant Petition for Alien Worker) to USCIS within 180 days, causing the ETA Form 9089 to expire, in October 2011.

Therefore, the I-140 application was denied "in or before November 2012."

During a period of approximately fifteen months, and despite repeated inquiries, respondent failed to provide Esposito with any information about the application. Esposito did not learn, until February 2014, that the application needed to be re-filed.

During those fifteen months, Esposito spoke with respondent's associates named Tia, Mike, Tass, and Gloria, none of whom adequately responded to his inquiries. Finally, in February 2014, Gloria advised Esposito that the filing process would have to begin again. Esposito requested a meeting with respondent, but received no reply until November 2014, nine months later.

Respondent's failure to prosecute Santamaria's application to completion resulted in its denial.

Employee Mario Chali Chitic

On July 29, 2008, respondent filed an application for an ETA Form 9089 on behalf of Esposito's employee, Mario Chali Chitic. Between July 2007 and March 2009, Esposito received no updates from respondent regarding Chitic's application.

On March 20, 2009, the Department of Labor (DOL) notified respondent that the ETA Form 9089 for Chitic was selected for an audit, requiring additional information for approval. Respondent was informed of the following potential consequences of failing to submit the required documents by April 20, 2009:

- (1) the application would be denied;
- (2) the failure to provide the requested documentation in a timely manner would constitute a refusal to exhaust available administrative remedies; and
- (3) the administrative judicial review procedure provided in [20 CFR] § 656.26 would not be available.

Then, on August 12, 2010, the DOL notified respondent that the Chitic application had not been certified for three reasons:

- (1) the employer did not disclose the posting dates for the notice of filing for the Application for Permanent Employment Certification and also failed to confirm that the notice was posted for 10 consecutive business days between 30 and 180 days before filing the ETA Form 9089;
- (2) the notice of filing for the Application for Permanent Employment Certification submitted by the employer contains a wage, \$24.08 per hour, which is lower than the offered wage of \$25.00 per hour listed in item G.1 of the ETA Form 9089 [and therefore violating 20 CFR 656.10(d)(4), which requires that the job notice "not contain wages or terms and conditions of employment that are less favorable than those offered to the alien"]; and

- (3) the job order placed with the State Workforce Agency serving the area of intended employment contains a wage rate lower than the prevailing wage rate [when the advertisement must "not contain a wage rate lower than the prevailing wage rate"].

Subsequent to the August 12, 2010 notice from the DOL, respondent performed no further work on the matter. In May 2014, approximately seven years after he first retained her, Esposito scheduled an appointment with respondent to discuss the Chitic application. At that meeting, respondent informed Esposito that Chitic could do nothing to gain immigration status. Esposito asked for respondent's file in the Chitic matter and the passports for both Santamaria and Chitic. Respondent could not find either. The stipulation also notes that no attorney was assigned to manage Esposito's cases while respondent was out of the office due to illness.

The Jacinth Timol-Francis Matter (VA-2015-0011E)

On August 4, 2014, Jacinth Timol-Francis consulted respondent on immigration matters concerning her father. Timol-Francis and her father met respondent at her office and paid a \$120 consultation fee. At the conclusion of the meeting, respondent provided Timol-Francis with a retainer agreement seeking a \$10,000 fee to file an I-130 petition, a Form I-485 Adjustment of Status Application, a motion to reopen the

deportation case, and a motion to vacate a conviction, on behalf of Timol-Francis' father. Additionally, on the same day, respondent's office staff instructed Timol-Francis to complete a FOIA application. On August 9, 2014, Timol-Francis delivered the completed FOIA paperwork to respondent, along with other personal information.

On August 22, 2014, in accordance with the retainer agreement, Timol-Francis paid respondent \$2,000. While making that payment over the phone, Timol-Francis asked respondent's staff about the status of the matter. Later that day, she received a call from respondent, thanking her for the deposit, and asserting that work on the matter would begin quickly. Timol-Francis called respondent's office approximately one week later, after not hearing anything further, but received no response.

Eventually, on September 12, 2014, respondent's office left a message requesting that Timol-Francis again provide respondent's office with the FOIA paperwork and other personal information, because the originals could not be located. Timol-Francis became concerned that her family's personal information had been misplaced. For more than one week, she unsuccessfully attempted to speak with respondent by phone. Finally, on

September 22, 2014, Timol-Francis contacted a member of respondent's staff and demanded a refund of her deposit.

After 10:00 p.m. on that same day, respondent called Timol-Francis, assuring her that the documents would be found, and inviting her to bring to the office a new set of documents "just in case." When Timol-Francis provided a new set of documents, she noticed the original set of documents on respondent's desk.

On October 7, 2014, after respondent's inaction and non-communication continued, Timol-Francis notified respondent by text message that she was terminating the representation, and requested a refund. Respondent refused the request, and had no further communication with Timol-Francis. Respondent performed no substantive services for which she had been retained and paid.

The Karlene Steward Matter (VA-2015-0012E)

On August 19, 2011, Karlene Steward consulted respondent for assistance in obtaining legal status, based on her marriage to a United States citizen. The initial consultation took place in respondent's New York office, for an \$80 fee. About that time, Steward's husband became abusive to her, and they separated. Respondent represented to Steward that she would prepare and file applications, including an I-360 Battered

Spouse Petition, on her behalf. Respondent quoted Steward a \$4,500 fee and requested a \$2,000 deposit to be paid before the I-360 application was filed.

On August 22, September 6, and September 22, 2011, Steward delivered documents to respondent's office, and paid \$1,400 toward respondent's fee. Steward and her husband then reconciled and, for a brief time, Steward did not pursue respondent's services. The reconciliation, however, was unsuccessful, and on October 19, 2012, and January 8, 2013, Steward made additional payments totaling \$650.

On January 12, 2013, respondent met with Steward and provided her with a retainer agreement for the I-360 and adjustment of status filings. That agreement acknowledged receipt of the \$2,050 and established a payment plan of \$250 per month for the balance. Soon thereafter, respondent filed the I-360 application.

In September 2013, Steward received correspondence from respondent's office, along with a notice from USCIS, requiring additional evidence by November 30, 2013. Respondent requested that Steward provide the additional information, including an affidavit, by November 8, 2013. Although on several occasions, Steward requested assistance with the affidavit, and although respondent promised assistance, including the provision of a

form affidavit for Steward's use, Steward received neither the form nor drafting assistance.

Eventually, in November 2013, Steward met with respondent to review her affidavit. Steward also provided respondent with additional supporting documents so that all required paperwork was in respondent's possession by November 19, 2013. Additionally, Steward paid respondent \$50 cash to send the documents by express mail to ensure delivery by the November 30, 2013 deadline.

On May 20, 2014, respondent's New York office staff informed Steward that she needed to schedule a meeting to discuss changes in the law relating to spousal abuse cases. Steward unsuccessfully attempted to make an appointment. On May 29, 2014, fearful of an approaching deadline, she visited respondent's Newark office, but was told that no meeting was necessary. Nevertheless, Steward was given an appointment for June 7, 2014.

On June 7, 2014, Steward met with respondent, who told Steward that she needed to submit a new application, due to a change in the law. Steward inquired about the change and the status of her original application, but respondent was evasive. Later that month, Steward received blank forms from respondent's

office relating to the I-360 application and was told to sign but not date them. Steward refused to do so.

Instead, on August 18, 2014, Steward visited respondent's office to inquire about the status of her original application. "Tass" (one of respondent's associates) informed Steward that the petition had been denied some time before, but would not provide Steward with a copy of the denial. Tass scheduled an appointment for Steward to meet with respondent in New York, on August 23, 2014.

At the August 23, 2014 meeting, respondent could not locate the denial in the file, and said she would e-mail it to Steward within two days. She did not. Respondent has never provided Steward with a copy of the denial. Thereafter, Steward retained new counsel.

Finally, on September 28, 2014, Steward learned that her application had been denied by USCIS on January 9, 2014 - more than seven months before respondent's office had so advised her. Through her new counsel, Steward both attempted to appeal the denial, and moved for reconsideration, but was unsuccessful.

The Shateema Cumming Matter (VA-2015-0014E)

In late April or early May 2014, Shateema Cumming retained respondent for assistance with her husband's immigration matter. At that time, "Steward" paid \$3,500 for legal services and \$1,400 for filing fees.¹

Beginning in July 2014, "Steward" began calling respondent's office inquiring about the status of the filing, but received no response. On September 17, 2014, "Steward" filed an ethics grievance against respondent in the State of New York. Shortly thereafter, on September 24, 2014, for the first time since the retention, respondent called "Steward," informing her that the paperwork had been filed. Respondent was aware of the New York grievance because she requested that "Steward" withdraw the complaint.

The Malvin Williams Matter (VA-2015-0016E)

Sometime in 2013 or 2014, Malvin Williams retained respondent for immigration-related services. Williams paid \$10,000, plus travel expenses to respondent, whom "Williams

¹ The stipulation erroneously refers to Steward instead of Cumming for the remainder of this client matter.

says" was "never reachable, omitted important documents from [his] file and showed up one day late for [his] final hearing."

The Norma Watson Matter (VA-2015-0034E)

On an unknown date, Norma Watson, a native of Jamaica, paid respondent \$100 for a consultation regarding her husband's activities. On September 13, 2014, after Watson learned anecdotally that her husband had alleged to Jamaican authorities that she had "run away" to the U.S. and could not be located, Watson retained respondent. Specifically, Watson asked respondent to investigate whether Watson's estranged husband had returned to Jamaica, married another woman, and then returned with her to the U.S. Watson paid respondent an initial \$1,000 retainer fee and then an additional \$300 to "check it out."

Watson "alleges" that on September 13, 2014, while in respondent's office discussing the matter, and without her permission, respondent called Watson's husband and advised him that if he married illegally, USCIS would rescind his new wife's "green card" and send her back to Jamaica. Watson was upset that respondent had called her husband, and in the following weeks, contacted respondent's office several times to express her displeasure and to inquire about the status of the matter. She received no substantive response.

Eventually, on the evening of November 13, 2014, Watson received a call from respondent, who told Watson that she had heard from her staff that Watson had threatened her. Watson denies having made any threats.

Two days later, on November 15, 2014, Watson met with respondent, who provided Watson with a copy of a letter from USCIS, dated November 13, 2014, denying her FOIA request as inadequate. Respondent told Watson that she had submitted the FOIA request on September 15, 2014. According to the USCIS denial letter, however, the FOIA request was "received in this office November 13, 2014 regarding Norma Watson." Respondent misrepresented to Watson the submission date of the FOIA request, and then made no effort to resubmit it after it had been denied.

Respondent became abusive to Watson, beginning in November 2014, accusing Watson of having a "bad heart," demeaning her in front of others on a visit to respondent's office, alleging Watson did "voodoo," and telling Watson that her husband had to run away from her because she was a bad person.

Respondent never obtained any information regarding Watson's husband and performed none of the services for which she had been retained and paid.

The Oleg Stoyalov Matter (VA-2016-0015E)

On September 2, 2014, Oleg Stoyalov retained respondent for assistance with a work permit, travel documents, a "green card," and a change of status based on marriage to a U.S. citizen. The agreement required a \$4,000 retainer, representing \$2,500 for respondent's legal services and \$1,500 for filing fees. Stoyalov paid the retainer amount in full, and respondent assured him that she would file the requisite applications.

Although respondent filed the applications, she paid the filing fee with a personal check, which later was returned to her for insufficient funds. Respondent failed to inform Stoyalov that the filing fee payment was returned, and misrepresented the status of the applications to him.

In January 2015, Stoyalov received notice from USCIS that it would terminate his application in two weeks if it did not receive the required fee. He repeatedly called respondent's office and was always told that he should not worry. Nonetheless, by letter dated February 3, 2015, USCIS notified Stoyalov that his application had been rejected for failure to pay the filing fee. Stoyalov attempted to contact respondent several times by phone and by visiting her office, but received no response or assistance from her or her office staff. Stoyalov's wife eventually spoke with respondent, who claimed

that she was still awaiting return of the application documents from USCIS.

Stoyalov's wife then called USCIS, which denied that any documents would be returned and advised her to file a new application. Stoyalov then requested a refund from respondent, which she did not provide.

In March 2015, Stoyalov returned to Russia because his visa was set to expire. He returned to the U.S. shortly thereafter on an extended visa. Stoyalov continued to seek assistance, an explanation, and a refund from respondent, but received none. Respondent was unresponsive to Stoyalov and did not perform the services for which she had been retained and paid.

* * *

In aggravation, the stipulation recited respondent's prior reprimand for, among other things, failing to communicate with her client and failing to act diligently in an immigration matter. Although the stipulation noted that, "the frequency and repetitious pattern of respondent's violations, involving at least ten incidents in six years," could support respondent's disbarment, in light of respondent's limited disciplinary history and her cooperation with ethics authorities, the DEC recommended a three-month suspension.

Respondent submitted a brief to us addressing an extensive period of time in which she experienced great personal difficulty. Specifically, respondent immigrated to the United States in 1981 from Kingston, Jamaica. Shortly, thereafter, in 1982, she enrolled in Fairleigh Dickinson University. In 1983, she married her childhood sweetheart. Thereafter, she gave birth to a daughter, Ashley, moved to Massachusetts, and was admitted to the University of Massachusetts.

Eventually, respondent's husband became physically and emotionally abusive. Upon graduation, in 1992, respondent began a long history of service at a battered woman's shelter, where she assisted underprivileged women seeking legal help to become self-sufficient, all while enduring her husband's abuse.

Respondent's experience serving these women led to her enrollment in law school in 1993. After graduating, in 1997, respondent left her abusive husband and opened her own law firm. Through her firm, she continued to serve underprivileged women in various communities, especially women from south Asian countries.

Respondent continued to balance her career and single motherhood. In 2009, however, she began her battle with depression. In 2010, she attempted to take her own life. Soon thereafter, her daughter began to suffer from severe medical

issues. Respondent split her time between caring for her daughter and managing her own depression.

Respondent's circumstances improved by 2013. She was managing her depression through therapy and medication, and her daughter was well enough to return to her normal routine, became engaged, and started to plan her wedding for August 10, 2013. Unfortunately, the day before the wedding, respondent suffered a stroke, which stripped her of her mobility on her right side. Her speech was slurred and she was unable to drive or write. She was finally able to return to her law practice in February 2014, after intensive rehabilitation.

In her brief, respondent argues that her misconduct generally was a product of her personal problems, such as severe depression and a debilitating stroke. She did not intend to act unethically, and she did not profit from her misconduct. Therefore, based on the extensive mitigation offered, respondent urged us to impose only a reprimand.

* * *

The stipulation contains sufficient evidence to support the conclusion that respondent's conduct was unethical.

In the Stephens matter, respondent was retained to obtain a divorce judgment. After one year had passed, however, the divorce complaint was dismissed for lack of prosecution.

Respondent's failure to adequately pursue the matter violated RPC 1.1(a) and RPC 1.3.

Additionally, for over one year, Stephens placed phone calls to respondent, seeking status updates, to no avail, a violation of RPC 1.4(b).

Finally, despite repeated assurances to Stephens from respondent's associates that the matter was being handled, that was not true. However, although respondent stipulated that she violated RPC 5.1, by virtue of her associates' actions, we find no evidence to support that violation. Specifically, respondent stipulated that "the matters for which [she] was retained were at various times handled by multiple associates at [her] firm [and that] in certain of these matters . . . respondent exhibited a pattern of lack of diligence and indifference by the associates working under [her supervision]." Essentially, respondent stipulated that her associates' actions were imputed to her. Under RPC 5.1, however, a lawyer is responsible for another lawyer's violation of the RPCs if the lawyer ratifies the conduct involved, or if the lawyer, who has direct supervisory authority over the other lawyer, knows of the misconduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action. The

stipulation contains no facts to support either of these conclusions. Thus, we dismiss that charge.

In the Smith matter, respondent was hired to help Smith obtain an immigration status adjustment. After learning of multiple errors on the application she submitted on Smith's behalf, respondent took no action to correct the application. Instead, respondent advised Smith to marry her fiancé, Stephens, and re-file the application subsequent to the marriage. By failing to correct the application in the first instance, respondent violated RPC 1.1(a) and RPC 1.3. Additionally, respondent failed to reply to Smith's repeated requests for information about her matter over the course of many months, in violation of RPC 1.4(b).

In the Campbell matter, Campbell hired respondent for assistance with her immigration matter. Despite Campbell's completion of all of the necessary documents, the stipulation states that "[i]t does not appear that the application was ever filed." Although this sentence is not clear, in the context of a stipulation, respondent's admissions in this respect support a violation of RPC 1.1(a) and RPC 1.3.

Respondent then advised Campbell to complete another FOIA request, which Campbell did. That request was never filed. Ultimately, respondent performed none of the services for which

Campbell had paid her. Respondent's conduct in this regard violated RPC 1.1(a) and RPC 1.3.

Further, after several months, respondent stopped communicating with Campbell, a violation of RPC 1.4(b). Finally, respondent told Campbell that she had submitted the FOIA application and was awaiting a reply. Respondent stipulated that she never filed that application and, therefore, she made misrepresentations to Campbell, in violation of RPC 8.4(c).

In the Esposito matter regarding employee Juan Perez Santamaria, by October 2011, respondent failed for more than 180 days to submit a required form, resulting in the denial of Santamaria's Alien Worker petition. Her neglect violated RPC 1.1(a) and RPC 1.3.

Further, despite Esposito's repeated inquiries about the status of the application, respondent failed to communicate with him for fifteen months. In February 2014, Esposito requested a meeting with respondent, but did not hear from her until November 2014. Respondent's failure to communicate with her client was egregious and a violation of RPC 1.4(b).

The stipulation notes that, after fifteen months had passed, several of respondent's office staff spoke with Esposito, but were unable to provide him with adequate

information. These facts alone are insufficient to support the alleged violation of RPC 5.1(b) (failure to supervise).

In the Esposito matter regarding employee Mario Chali Chitic, on July 29, 2008, respondent filed an immigration application in behalf of Chitic. In March 2009, the DOL notified respondent that the application had been selected for an audit and additional information would be required. The DOL further advised that failure to submit the additional information by April 20, 2009 could result in the denial of the application. Because respondent failed to comply with the request for information, on August 12, 2010, the DOL denied the application. By her failure to pursue the Chitic application for over two years after its initial filing, respondent violated RPC 1.1(a) and RPC 1.3.

Respondent also failed to communicate with Esposito regarding the status of the Chitic application. Esposito made numerous phone calls to respondent's office seeking status updates, but did not receive any response for two years. Respondent eventually informed Esposito, in May 2014, seven years after he first retained her, and five years after the parties first received the letter of denial for Chitic, that Chitic was no longer eligible to gain immigration status. Respondent's conduct in this regard violated RPC 1.4(b).

In the Timol-Francis matter, on August 9, 2014, Timol-Francis provided respondent a completed FOIA application, along with other personal information, in order to pursue an immigration adjustment on behalf of her father. Over one month later, on September 12, 2014, respondent's staff requested that Timol-Francis again provide the FOIA paperwork and personal documents because the original documents could not be located. Timol-Francis hesitantly provided a new set of documents. Nonetheless, respondent's inaction continued, and eventually, on October 7, 2014, Timol-Francis terminated the representation. Respondent's failure to perform any significant work on the Timol-Francis matter violated RPC 1.1(a) and RPC 1.3.

Additionally, after Timol-Francis had learned that her personal information had been misplaced, she made several unsuccessful attempts to contact respondent, between September 12 and September 22, 2014. Only after she informed respondent's office that she wanted a refund of her deposit did respondent return her phone call. Respondent's communication with Timol-Francis, prompted by her client's threat of termination, fell well below the standard expected of an attorney, in violation of RPC 1.4(b). Because the stipulation did not cite RPC 1.16(d) (failure to return an unearned fee), we do not find a violation of that Rule.

In the Steward matter, Steward retained respondent on August 19, 2011, in connection with a battered spouse petition for an immigration status adjustment. Steward signed the retainer agreement on January 12, 2013, and respondent soon thereafter filed the application. Nine months later, Steward learned that her application required additional information, which she provided. Nonetheless, on January 9, 2014, her application was denied. In addition to compiling the additional information needed for her application, Steward was required to complete an affidavit. Despite repeated assurances that she would be given guidance and a form affidavit to follow, respondent left Steward on her own to complete the document. In this regard, respondent violated RPC 1.1(a) and RPC 1.3.

Steward did not learn of the denial until August 18, 2014, when she asked Tass about the status of the application at respondent's office. Neither Tass nor respondent could provide Steward with a copy of the denial. Respondent's failure to inform Steward that her petition had been denied violated RPC 1.4(b) and RPC 8.4(c) (misrepresentation by silence).

In the interim, on June 7, 2014, respondent told Steward that they needed to resubmit her application due to changes in the law. This statement was also a misrepresentation because

respondent knew, but failed to inform Steward, that the original application had been denied on January 9, 2014.

In the Cumming matter, Cumming retained respondent in May 2014 for assistance with her husband's immigration matter. Despite repeated attempts for information on the matter, Cumming did not speak to respondent until September 24, 2014. Respondent was prompted to communicate with Cumming after having learned that, on September 17, 2014, Cumming had filed an ethics grievance against her in New York. During that call, respondent told Cumming that the paperwork had been filed and requested that Cumming withdraw the ethics grievance against respondent. Respondent did little to no work on Cumming's matter despite being paid a significant amount of money to do so. She also failed to communicate in any manner with her client for over four months.

Nonetheless, we determined to dismiss the allegations pertaining to this matter. Throughout the stipulation, Cumming is erroneously referred to as "Steward," an error which in our view, is fatal to these claims.

In the Williams matter, as in the Cumming matter, we determined to dismiss the allegations related to the Williams matter. Respondent has stipulated merely that "Williams said" she was unreachable and appeared in court one day late. Thus,

respondent has not stipulated to the actual conduct and there are no other facts recited in the stipulation to support a finding of misconduct.

In the Watson matter, Watson hired respondent to research whether her estranged husband had returned to Jamaica, married another woman, and then returned with her to the U.S. On behalf of Watson, respondent filed an FOIA request that was eventually denied by USCIS. Respondent made no effort to improve or resubmit the request. She failed to perform any additional services on behalf of Watson, in violation of RPC 1.1(a) and RPC 1.3.

For several weeks after the September 13, 2014 phone call respondent placed to Watson's husband, Watson attempted to contact respondent to discuss her displeasure with her actions and to inquire about the status of her matter. She received no response. In failing to respond to her client, or to otherwise keep her reasonably informed as to the status of her matter, respondent violated RPC 1.4(b).

Eventually, on November 15, 2014, Watson met with respondent, who misrepresented that she had submitted the FOIA request on September 15, 2014. The denial letter, however, reveals that the application had been received on November 13, 2014. Respondent, thus, violated RPC 8.4(c).

In the Stoyalov matter, Stoyalov paid respondent \$2,500 for assistance in adjusting his immigration status. Although he paid an additional \$1,500 specifically for filing fees, respondent filed Stoyalov's application using a personal check for the filing fee. That check was returned for insufficient funds. Respondent took no action to cure the deficit. On February 3, 2015, the application was dismissed for failure to provide a filing fee. By failing to pay the filing fee, and allowing the application to be dismissed, respondent violated RPC 1.1(a) and RPC 1.3.

In January 2015, Stoyalov received notice that his application would be terminated in two weeks if the required fee were not received. He called respondent's office several times and repeatedly was told not to worry. After he learned the application was terminated, Stoyalov called respondent's office and visited in person. He received no assistance or communication from respondent or her staff. Respondent failed to communicate with Stoyalov regarding the return of her personal check, and failed to respond to his reasonable requests for updates, in violation of RPC 1.4(b).

Further, respondent failed to inform Stoyalov that the personal check she submitted for his filing fee had been returned. This misrepresentation by silence allowed Stoyalov to

believe that his matter was progressing, when it was not. In so doing, respondent violated RPC 8.4(c).²

Finally, because respondent committed gross neglect in multiple client matters, she engaged in a pattern of neglect, in violation of RPC 1.1(b).

In sum, we find that respondent is guilty of violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in nine matters; and RPC 1.1(b) and RPC 8.4(c) in four matters.

Attorneys who mishandle multiple client matters generally receive suspensions of either six months or one year. See, e.g., In re LaVerque, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failure to

² We are concerned by an issue not addressed by the record. Stoyalov already had given respondent \$1,500 specifically for the payment of the application filing fees, in addition to her legal fee. Thus, he entrusted those funds to her for a specific purpose. Yet, for reasons not explained in the record, respondent attempted to pay the filing fee with a personal check, which subsequently was returned for insufficient funds. The stipulation specifically states that respondent neither had her client's permission to use the filing fee for any other purpose, nor did she inform Stoyalov that her personal check had been returned. Stoyalov's application was terminated because respondent never cured the filing fee deficiency. We are left to question what respondent did with the funds her client gave her to use for the specific purpose of paying the filing fees. It is clear that she did not return those funds to him.

communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; 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 one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations); 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 matters to proceed as defaults; 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 had received a reprimand in 1990 for gross neglect in two matters - at which time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee - and another reprimand in 1996 for failure to communicate, failure to supervise office staff, and failure to release a file to a client); 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 surrender a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Suarez-Silverio, 226 N.J. 547 (2016) (one-year suspension for an attorney who, over thirteen years, mishandled twenty-three client matters before the Third Circuit Court of Appeals, many of which ended by procedural termination; the attorney also disobeyed court orders and made a misrepresentation to the court clerk, which escalated the otherwise appropriate six-month suspension; previous admonition and reprimand for similar conduct); 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 had a prior reprimand); and In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, 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 misconduct).

In a matter that involved significant mitigation, including alcoholism, a three-month suspension was imposed, despite a large number of mishandled client matters. See In re Tarter, 216 N.J. 425 (2014) (three-month suspension for attorney who was guilty of misconduct in eighteen matters; specifically, he was guilty of lack of diligence and a pattern of neglect in fifteen cases, gross neglect in one, and failure to withdraw from or to decline representation and failure to properly terminate the representation in all eighteen matters; mitigating factors included respondent's claim of alcoholism, the relatively short period within which most of his misconduct took place - three months, and his previously unblemished eight-year career). But see, In re Burns, 181 N.J. 315 (2004) (three-year suspension in a

default matter for an attorney guilty of misconduct in seven client matters, as well as an additional matter involving a dispute with his former law firm; specifically, he was guilty of gross neglect, a pattern of neglect, failure to abide by the client's decisions, lack of diligence, failure to communicate, failure to promptly deliver funds to clients, failure to protect a client's interest upon termination of the representation, frivolous claims, failure to expedite litigation, fairness to opposing party and counsel, failure to cooperate, misrepresentations, and conduct prejudicial to the administration of justice; although we had recommended a three-month suspension, the Court granted the Office of Attorney Ethics' petition for review, imposed a three-year suspension, and required the attorney to provide proof of his attendance at Alcoholics Anonymous meetings; no history of discipline).

Based on the foregoing, typically, a six-month suspension is imposed when an attorney has mishandled six to eight client matters over a shorter period of time – up to five years – even when other infractions, such as misrepresentation, are involved. A one-year suspension is imposed in cases involving more numerous client matters. Often, however, those matters include many other offenses, a pattern of misrepresentations, a history of discipline, and longer periods of offensive behavior – up to

thirteen years.

In the instant matter, respondent mishandled ten matters over the course of seven years and made misrepresentations to clients. Hence, respondent's misconduct warrants either a six-month or one-year suspension.

In aggravation, respondent received a reprimand for failure to communicate with her client, lack of diligence, and failure to protect her client's interests upon termination of the representation in an immigration and a matrimonial matter. That discipline was issued on October 17, 2013, during the heart of the misconduct in the client matters relevant to this matter. Respondent, thus, failed to learn from her prior infractions, and repeated her misconduct in multiple client matters.

In further aggravation, respondent's conduct, taken as a whole, is severe. She collected a significant amount of money from her clients and did little to no work on their matters. She allowed matters to languish for months, and, in some cases, years. Not once did she achieve any tangible result relative to the amount she was paid for her legal services. In one case, due to her gross neglect, her client had to return to Russia and await permission to re-enter the country. In others, clients lost their ability to appeal adverse determinations.


Ultimately, she caused great harm to her clients, some of whom were required to retain new counsel.

In mitigation, however, respondent cooperated with ethics authorities and stipulated to the misconduct. Moreover, she proffered a significant amount of information regarding her personal struggles during her period of misconduct, including her struggle with depression, culminating with an attempt to take her own life, as well as her daughter's illness, and, eventually, a significantly debilitating stroke. Therefore, on balance, we determined that a three-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Member Gallipoli voted to impose a one-year suspension. Member Hoberman did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Joan Othelia Pinnock
Docket No. DRB 18-036

Argued: June 21, 2018

Decided: July 30, 2018

Disposition: Three-month Suspension

<i>Members</i>	Three-month Suspension	One-year Suspension	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman				X
Joseph	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1


Ellen A. Brodsky
Chief Counsel