

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-056
District Docket Nos. XIV-2015-0456E;
XIV-2016-0247E; and XIV-2016-0464E

IN THE MATTER OF
AILEEN MERRILL SCHLISSEL
AN ATTORNEY AT LAW

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Decision

Argued: April 19, 2018

Decided: August 3, 2018

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having violated RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 5.5(a) and R. 1:21-1B(a)(4) (unauthorized practice of law for failure to maintain professional liability insurance), RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary

authority), and RPC 8.4(d) (conduct prejudicial to the administration of justice, based on her failure to file an affidavit of compliance in accordance with the R. 1:20-20). For the reasons expressed below, we determine that a three-month suspension is warranted. We do not agree, however, on whether the suspension should be prospective or retroactive.

Respondent was admitted to the New Jersey and New York bars in 1997, and the Nevada bar in 2008. She was temporarily suspended, effective March 8, 2017, for failure to cooperate with the OAE's investigation in this matter. In the Matter of Aileen Merrill Schlissel, 228 N.J. 161 (2017).

This case involves respondent's failure to cooperate with the OAE for more than one-and-one-half years. Following two overdrafts in her trust account, she failed to produce records she was required to maintain under R. 1:21-6, despite the OAE's numerous requests, the granting of extensions, and scheduled audits. As mentioned above, respondent's failure to cooperate eventually led to her temporary suspension. In the interim, she also failed to reply to an additional grievance.

Respondent owned and operated AMS Legal Group PC (AMS), located in Rutherford, New Jersey, with offices in California and Nevada, as well as Merrill & Associates (Merrill), also with offices in California and Nevada. Both law firms were primarily

engaged in mortgage modifications, even though respondent is not licensed as a debt adjuster in any jurisdiction. Respondent admitted that she had not obtained professional liability insurance for either AMS or Merrill.

Respondent is also associated with the law firm of Malkin & Associates Attorneys Corp. (Malkin). Arthur Malkin, Esq. is the principal owner of Malkin. Respondent was a signatory on the Malkin business and trust accounts. She maintained four business accounts and one trust account at Bank of America for AMS, and three business accounts and one trust account at Wells Fargo Bank for Malkin.

On July 16, 2015, a \$370.91 overdraft occurred in the Bank of America AMS trust account. Before docketing the matter for an investigation, the OAE attempted to obtain respondent's explanation for the overdraft. She did not reply, however, to the OAE's July 28 or August 17, 2015 requests for a written, documented explanation for the overdraft.

Thereafter, by letter dated August 18, 2015, Bank of America notified the OAE of another overdraft in the AMS trust account, in the amount of \$958.85.

From August 25 to October 8, 2015, the OAE sent four additional letters to respondent, seeking written explanations for the overdrafts, to no avail. Therefore, by letter dated

November 23, 2015, sent to respondent's New Jersey and California addresses, the OAE notified respondent that, because she had not replied to its six earlier letters, the OAE had scheduled a demand audit on December 16, 2015. Respondent failed to appear for the audit.

On January 5, 2016, the OAE telephoned respondent, at which time she admitted receiving the OAE's correspondence, but asserted that Arthur Malkin, Esq. ran the New Jersey law office. The following day, respondent wrote to the OAE that she was "eager to fully explain all of the events that occurred in 2015," but still did not supply the records that the OAE had requested.¹

Thereafter, respondent again failed to produce the records that the OAE requested in yet another letter, dated January 21, 2016.

Subsequently, by letter dated February 18, 2016, Assad K. Siddiqi, Esq. notified the OAE that he had been retained to represent respondent in the overdraft matters. On March 4, 2016, Siddiqi forwarded to the OAE a copy of a police report in

¹ The three and one-half page letter detailed, among other things, problems respondent had with an employee, which resulted in her financial problems and the dissolution of her company. She asserted further that she had relied on a bookkeeper, whom she believed to be experienced, but the bookkeeper had not properly maintained her books and records.

connection with respondent's complaint against a former employee for harassment and theft of a check and her signature stamp. However, Siddiqi did not produce the requested documentation. In an April 6, 2016 letter, the OAE instructed Siddiqi to produce respondent's records by April 26, 2016. The OAE later granted Siddiqi an extension to May 13, 2016. Siddiqi's May 13, 2016 seventeen-page letter explaining respondent's delays in communicating with the OAE did not include the previously requested records.² On June 8, 2016, the OAE informed Siddiqi that the reply was "significantly deficient," as it failed to provide the requested records.

On May 5 and August 4, 2016, the OAE docketed referrals it had received, from the New Jersey Office of the Attorney General (OAG) and the California State Bar, respectively.³ On May 5, 2016, the OAE requested that Siddiqi submit a documented reply to the OAG's referral by June 13, 2016, which he did.

² The letter, among other things, detailed respondent's personal and professional challenges, and answered some of the OAE's questions, but asserted that much of the requested documentation was no longer available and that the bank was "dragging its feet" in supplying information. Siddiqi, therefore, suggested that the OAE subpoena the information from the bank.

³ It appears that the referrals related to real estate matters and alleged violations of RPC 8.4(c).

By letter dated June 8, 2016, the OAE scheduled a demand audit for July 14, 2016, and instructed respondent to produce trust and business account records for the period from November 1, 2014 to the present. Respondent appeared with Siddiqi. Although she produced copies of correspondence and e-mails, she failed to produce the records required under R. 1:21-6.

The OAE also requested a documented reply to the referral from the California State Bar, by August 26, 2016. On August 31, 2016, the OAE granted Siddiqi's request for an extension, to September 16, 2016, to reply to the California matter. As of the date of the disciplinary stipulation, respondent had not replied to the California referral. In October 2016, Siddiqi withdrew as respondent's counsel.

By letter dated October 19, 2016, respondent, acknowledging that she was no longer represented by counsel, informed the OAE that she had been experiencing health problems and family issues; that she had "spotty access" to client files, which were kept on the "Leadtrac" computer program; and that she had given her files and bank statements to a bookkeeper to help recreate her ledgers. Respondent added, "I would like to know if there is any possibility of a conditional plea for a stated form of punishment."

Thereafter, by letter dated November 9, 2016, the OAE directed respondent to produce her Leadtrac records, as well as all the records previously requested, no later than November 28, 2016. Respondent failed to provide the records. Instead, in a November 29, 2016 e-mail, she indicated that she would forward a "CD" containing her financial records, via certified mail. As of the date of the stipulation, February 7, 2018, however, the OAE had received neither the CD nor any of the "referenced" financial records. In a December 5, 2016 e-mail, respondent informed the OAE that her bookkeeper had lost her home to a fire, but did not assert that respondent's own records had been lost in that fire.

By letter dated December 6, 2016, the OAE renewed its request for the production of respondent's Leadtrac records and the previously requested "R. 1:21-6 records" by December 16, 2016. Respondent did not comply with the request. On December 22, 2016, having heard nothing further from respondent, the OAE warned her of its option to seek her temporary suspension, and extended the deadline for her compliance to January 6, 2017. Respondent did not supply the information to the OAE, prompting a January 6, 2017 telephone message requesting that she contact the OAE immediately. Respondent did not do so.

On February 7, 2017, the OAE petitioned the Court for respondent's temporary suspension. Respondent did not oppose the petition. As noted above, the Court temporarily suspended her, effective March 8, 2017. The Court's Order of suspension required respondent to comply with R. 1:20-20. She failed to file the affidavit required by that Rule.

According to the stipulation, respondent's recordkeeping violations included her failure to "maintain or produce upon request": (1) trust or business receipts or disbursements journals (R. 1:21-6(c)(1)(A) and R. 1:21-6(a)(2)); (2) client ledger cards or a ledger card identifying attorney funds for bank charges (R. 1:21-6(c)(1)(B) and R. 1:21-6(d)); and (3) three-way trust account reconciliations, on a monthly basis (R. 1:21-6(c)(1)(H)). Respondent also conducted electronic transfers without proper written authorization (R. 1:21-6(c)(1)(A)).

In addition, the stipulation provided that respondent "recklessly" failed to comply with the requirements of R. 1:20-6 by delegating the safeguarding of trust account records and/or client files to a third-party company, Leadtrac, without ensuring that she would have access to the records at all times. She also recklessly stored her financial records on an unsecured and removable hard drive.

The stipulation further provided that respondent failed to cooperate with the OAE (RPC 8.1(b)), not only by failing to reply to multiple requests for records, files, and financial records, but also by failing to file the R. 1:20-20 affidavit, which is also a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice).

Based on respondent's lack of cooperation, including her failure to produce client files, financial records, and other documentation, the OAE was unable to fully investigate the three docketed matters against her and could not determine whether client funds had been properly safeguarded.

In the stipulation, the OAE urged a three-month suspension as the appropriate discipline for respondent's misconduct. In addition, as part of any discipline imposed, respondent agreed that the Order of temporary suspension will remain in effect until further Order of the Court, and until such time as she cooperates with the OAE. Further, respondent represented that she will: (1) provide the OAE with the previously requested records and files, as a condition of her discipline and as a condition precedent to her reinstatement from the temporary suspension Order; (2) practice under the supervision of a proctor; (3) provide the OAE with quarterly reconciliations; (4) attend an OAE-approved New Jersey trust and business accounting

course that will not count toward the annual continuing legal education requirements, pursuant to R. 1:42-1; and (5) comply with R. 1:20-20 as a condition of reinstatement.

The stipulation cited admonition and reprimand cases involving recordkeeping violations and the failure to safeguard funds and to promptly deliver funds. As to the reckless or willful disregard of the recordkeeping rules, the stipulation maintained that the discipline for such conduct has ranged from a three-month to a three-year suspension. Finally, the stipulation noted that the standard discipline for failure to maintain professional liability insurance, a violation of RPC 5.5(a)(1) (unauthorized practice of law), is an admonition.

The stipulation cited as aggravating factors respondent's failure to cooperate with disciplinary authorities and her out-of-state disciplinary history - a four-year suspension in Nevada, pursuant to a "conditional guilty plea agreement," for violations of RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 5.3 (responsibilities regarding nonlawyer assistants), RPC 5.4 (professional independence of a lawyer), RPC 5.5 (unauthorized practice of law), RPC 7.1 (advertising), RPC 7.2A (advertising filing requirements), and RPC 8.4 (misconduct).

In mitigation, the stipulation cited respondent's admission of wrongdoing, her expression of contrition, and remorse, and her acknowledgement of her obligation to comply with R. 1:21-6. In addition, the stipulation acknowledged respondent's diagnosis, prior to the OAE's investigation, of multiple serious illnesses, her continued treatment during the course of the investigation, and her difficulty to practice law caused by the side effects of the medication prescribed to treat her illnesses. Finally, the stipulation noted, in mitigation, Leadtrac's refusal to release respondent's case files and records, due to nonpayment for their services, as well as the fact that "an individual stole an external drive containing her financial records."

* * *

Following a full review, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

Specifically, respondent's failure to cooperate with the OAE, in violation of RPC 8.1(b), was so pervasive that the Court granted the OAE's petition for her temporary suspension. Respondent has been temporarily suspended since March 8, 2017. The Court's Order of temporary suspension required her to comply with R. 1:20-20, which she failed to do. Pursuant to R. 1:20-

20(a)(15)(c), she is, therefore, guilty of violating RPC 8.1(b) in this respect as well, in addition to RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent also failed to maintain professional liability insurance for her professional corporations, as R. 1:21-1(A)(a)(3) requires, a violation of RPC 5.5(a) (unauthorized practice of law). In addition, she failed to comply with several R. 1:21-6 recordkeeping requirements, a violation of RPC 1.15(d).

As noted in the stipulation, respondent's failure to cooperate prevented the OAE from determining whether the overdrafts in her trust account impacted client funds, and whether she either negligently or knowingly misappropriated trust funds.

In sum, we find that respondent violated RPC 1.15(d), RPC 5.5(a), RPC 8.1(b), and RPC 8.4(d). Respondent's most serious violation is her extreme failure to cooperate with the OAE, for more than a year-and-a-half. Generally, failure to cooperate with a district ethic committee's investigation results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three

criminal defense matters); and In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file; the attorney also failed to inform his client that a planning board had dismissed his land use application).

Reprimands have resulted, however, where attorneys failed to cooperate with the OAE, recordkeeping improprieties were found in the trust account, or requests for additional documentation were ignored. See, e.g., In re Del Tufo, 210 N.J. 183 (2012) (following an overdraft in the attorney's trust account, an OAE audit uncovered several recordkeeping violations, including the absence of client funds on deposit when the overdraft occurred; the deposit of personal and business funds into the trust account, including legal fees; and the payment of personal and business expenses from the trust account, among other deficiencies; the attorney failed, for two months, to reply to the OAE's initial request for a detailed explanation about the trust account overdraft, and hampered the OAE's efforts to schedule a demand audit by failing to return telephone calls or to reply to OAE correspondence; previously, after a 2006 random audit, the OAE had notified the attorney

that his practice of commingling personal and client funds was a violation of the recordkeeping rules); and In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

Here, respondent is also guilty of violating RPC 8.1(b) as well as RPC 8.4(d) for failing to comply with R. 1:20-20. The threshold measure of discipline for an attorney's failure to file the required R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004); In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Ibid.

Censures were imposed in the following cases, in which the attorneys had been temporarily suspended: In re Boyman, 217 N.J. 360 (2014) (default; attorney did not file the R. 1:20-20 affidavit after his temporary suspension for failure to pay administrative costs associated with his 2010 censure); In re Terrell, 214 N.J. 44 (2013) (default; attorney failed to file the required R. 1:20-20 affidavit, following a temporary suspension

for failure to satisfy a fee arbitration award); and In re Fox, 210 N.J. 255 (2012) (default; attorney did not file the R. 1:20-20 affidavit, after a temporary suspension).

Three-month suspensions were imposed where aggravating factors were present, such as a pattern of non-compliance or a significant ethics history. See, e.g., In re Palfy, 221 N.J. 208 (2015) (default; attorney exhibited a pattern of failure to cooperate with disciplinary and fee arbitration officials; he was twice temporarily suspended for non-compliance with five separate fee arbitration matters and was temporarily suspended for failure to cooperate with an OAE investigation; we determined that the baseline for attorneys who failed to file R. 1:20-20 affidavits, defaulted, and had only temporary suspensions on their record was a censure; enhanced discipline was required in the matter because of the attorney's "pattern of obstinacy toward ethics and fee authorities"); In re Garcia, 205 N.J. 314 (2011) (default; attorney failed to comply with R. 1:20-20; aggravating factors considered were her disciplinary history (a fifteen-month suspension), her failure to comply with the OAE's specific request that she file the affidavit, and the default nature of the proceedings); and In re Berkman, 205 N.J. 313 (2011) (default; aggravating factors included the attorney's prior nine-month suspension and the default nature of the proceedings).

As to respondent's recordkeeping deficiencies, generally, admonitions are imposed for recordkeeping violations that do not result in negligent misappropriation of trust funds. See, e.g., In the Matter of Clifford G. Stewart, DRB 16-061 (May 24, 2016) (multiple recordkeeping violations) and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (multiple recordkeeping violations, including improper electronic transfers from attorney trust account). But, see, In re Wianecki, Jr., 232 N.J. 454 (2018) (reprimand for attorney guilty of recordkeeping violations, including making improper electronic transfers without proper authorization; similar violations found in a prior OAE audit, which the attorney had certified he had resolved).

Finally, the failure to maintain professional liability insurance alone, a violation of RPC 5.5(a) and R. 1:21-1B(a)(4), warrants the imposition of an admonition. See, e.g., In the Matter of F. Gerald Fitzpatrick, DRB 99-046 (April 21, 1999) (attorney practiced law for six years, in a professional corporation, without maintaining professional liability insurance).

Individually, none of respondent's violations justify a suspension. However, we view her pattern of non-compliance with the OAE as a significant aggravating factor warranting a suspension.

We determine to impose a three-month suspension. Chair Frost and Members Rivera and Zmirich voted to impose a prospective

suspension. Vice-Chair Clark and Members Hoberman and Singer voted to impose a three-month suspension, retroactive to March 8, 2017, the effective date of the Court's Order temporarily suspending her. Member Gallipoli voted to recommend respondent's disbarment and filed a dissent. Members Boyer and Joseph did not participate.

We further determine that respondent should not be permitted to apply for reinstatement until she has fully cooperated with the OAE; and upon reinstatement, that she practice under the supervision of an OAE-approved proctor for a two-year period; that she submit monthly reconciliations of her trust account to the OAE on a quarterly basis for that same period; and that she attend an OAE-approved trust and business accounting course, in addition to the mandatory continuing legal education credits that R. 1:42-1 requires.

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

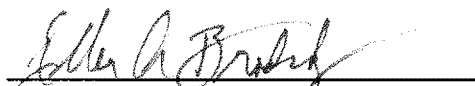
In the Matter of Aileen Merrill Schlissel
Docket No. DRB 18-056

Argued: April 19, 2018

Decided: August 3, 2018

Disposition: Three-month Suspension

<i>Members</i>	Prospective Three-month Suspension	Retroactive Three-month Suspension	Disbar	Did Not Participate
Frost	X			
Clark		X		
Boyer				X
Gallipoli			X	
Hoberman		X		
Joseph				X
Rivera	X			
Singer		x		
Zmirich	X			
Total:	3	3	1	2


Ellen A. Brodsky
Chief Counsel