SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-097
District Docket No. XIV-2016-0092E

IN THE MATTER OF	
KIRSTEN ELIZABETH FRANKLIN	
AN ATTORNEY AT LAW	

Decision

Argued: May 17, 2018

Decided: September 4, 2018

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se, via telephone.

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

The matter was before us on a motion for reciprocal discipline, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion was based on respondent's three-year suspension in Florida, for violations equivalent to New Jersey RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with clients), RPC 1.5(a) (charging an unreasonable fee), RPC 1.16(d) (failing to protect a client's interests upon termination of the representation), RPC 5.4(a) (sharing legal

fees with a nonlawyer), RPC 5.4(c) (permitting a person who employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services), RPC 5.4(d)(3) (practicing law in the form of a professional corporation where a nonlawyer has the right to direct or control the professional judgment of a lawyer), and RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, or inducing another to do so, or to do so through the acts of another).

Although the OAE originally recommended the imposition of a suspension in the range of "three to six months," retroactive to January 7, 2010, at argument before us, the OAE recommended either a short suspension or no discipline at all. Notwithstanding the OAE's recommendation, we determine to impose a three-year suspension, retroactive to January 7, 2010.

Respondent was admitted to the New Jersey bar in 2006, the New York bar in 2002, and the Florida bar in 2003. She has no history of discipline in New Jersey but, as noted above, she was suspended from the practice of law in Florida for three years, effective February 6, 2010. On February 5, 2015, the Supreme Court of Florida reinstated her to the practice of law.

The New Jersey Judiciary Central Attorney Management System reports respondent as having been ineligible to practice law in

New Jersey from 2007 to 2009, eligible in 2010, and retired as of 2011.

On November 3, 2009, respondent entered into a "Stipulation as to Probable Cause, Unconditional Guilty Plea and Consent Judgment for Discipline" in Florida. This document provides, in pertinent part, as follows.

From April 21 through July 2008, respondent was employed as in-house counsel for Outreach Housing, LLC (Outreach), a company marketed as a service provider to handle and defend foreclosure and real estate loss mitigation against Florida mortgage lenders.[1] To challenge impending foreclosure actions for its clients, Outreach referred its clients to a network of participating attorneys, who would initiate litigation actions for violations of unfair lending practices.

In July 2008, respondent formed Real Estate Law Group, PLLC (RELG) in Florida. She entered into an agreement with Outreach and its owner, Blair Wright, a nonlawyer. The agreement provided that she would receive funds for her law office's initial operating expenses and, thereafter, she would share fees with Outreach, receiving from it monthly payments for filing and client fees. Under the terms of her agreement with Outreach, and

[1] As of the date of the stipulation, Outreach was in receivership.

pursuant to documents executed by Outreach's clients, respondent became responsible for approximately 600 client files.

Outreach required its clients to sign a client authorization and consent form, and a limited power of attorney appointing Wright as their representative in nonlegal matters related to their foreclosures, and granting him authority to retain attorneys "of his choosing" to file lawsuits for them. The clients paid monthly fees, which were segregated in accounts in a bank, over which Outreach maintained control. Pursuant to the clients' authorizations, Wright would release the funds for related fees and costs.

On August 29, 2008, Outreach filed a lawsuit against respondent, "after a complete breakdown in their business relationship" had occurred. The suit was pending at the time of the stipulation. Subsequently, "all client files being handled by the Respondent were abandoned and all legal representation for those individuals ceased." In addition, "numerous clients" who had retained and paid respondent directly for legal representation were neglected and their foreclosure cases were abandoned.

On June 18, 2009, the Supreme Court of Florida permanently enjoined Outreach from engaging in the unlicensed practice of law.

As of the date of the stipulation, November 3, 2009, respondent had neither notified the clients and/or courts of her withdrawal and/or termination of representation in any of the client matters for which she had agreed to provide services nor refunded any fees she had received for their representation.

Respondent admitted that she violated Florida Rules 4-1.3 (lack of diligence and promptness in representing a client), 4-1.4 (communication), 4-1.5 (fees and costs for legal services), 4-5.4(a) (sharing fees with nonlawyers), 4-5.4(d) (permiting a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services), 4-5.4(e)(3) (prohibiting a lawyer from practicing with or in the form of a business entity authorized to practice law for a profit if a nonlawyer has the right to direct or control the professional judgment of a lawyer), and 4-8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or to do so through the acts of another).

Under the terms of the stipulation, respondent agreed to a three-year suspension; to pay restitution to sixteen individuals in amounts ranging from $500 to $2,248; to provide proof of such payment or, if the individuals could not be located, to "forfeit"

the payment to the Florida Bar's Client Security Fund; to pay the costs incurred in the prosecution of the matter; and to refrain from discharging the obligation in a bankruptcy proceeding.

The stipulation provided further that "every factual admission," specifically, the admissions in paragraph four, "shall have full force and effect regardless of any subsequent recommendation or action taken with respect to the terms of discipline offered by [sic] Respondent pursuant to this Consent Judgement for Discipline."

The stipulation listed, in mitigation, that, at the relevant time, respondent was suffering from severe post-partum depression; her health required that she move to another state, closer to family; and that she was able to work only as of January 2010, as a law clerk for the New Jersey Judiciary. Her financial hardship required her to live with a friend.

On January 7, 2010, the Supreme Court of Florida suspended respondent for three years, effective thirty days from the date of the order, unless she needed less time to close her practice and protect the interests of her existing clients.

Thereafter, respondent filed a petition for reinstatement. Because the Florida Bar objected, a final hearing on her petition was required. Respondent's petition had omitted information

relating to her employment history and her missed payments on a student loan.

On September 23, 2014, a final hearing was conducted before a referee, who concluded that respondent had proven, by clear and convincing evidence, the elements of rehabilitation: (1) she strictly complied with the conditions of the Florida disciplinary order, including paying restitution and the costs associated with the disciplinary proceedings; (2) she submitted affidavits attesting to her "unimpeachable character and good moral standing in the community;" (3) the same affidavits "alluded" to respondent's good reputation for her legal ability; (4) she exhibited a lack of malice and ill feelings and a realization that she should have conducted herself differently in her dealings with Outreach; (5) she acknowledged her wrongdoing, expressed remorse for her misconduct, and maintained that she had learned from her mistakes, all of which showed that "she will conduct herself in an exemplary fashion in the future;" and (6) she was active in the community and offered civic services.

The referee determined that the fact that respondent failed to inform a non-law-related employer about her Florida suspension was not disqualifying conduct. Moreover, she disclosed the suspension to "future employers." In addition, even though respondent had problems repaying her college loans, the referee

did not find that she was financially irresponsible. Rather, she was diligent under her financial circumstances.

Respondent testified at the hearing that, although she was also a member of the New Jersey and New York bars, she was "retired and/or inactive" and, therefore, believed that she was not obligated to report her suspension to those bars, and had received such advice from the New York ethics hotline.[2]

Finding that respondent had demonstrated that she possessed the requisite fitness to resume the practice of law, the referee recommended that her petition for reinstatement be granted. As mentioned above, on February 5, 2015, the Supreme Court of Florida reinstated respondent.

The OAE contended that some of respondent's violations, such as her lack of diligence or failure to communicate, would warrant only an admonition, if considered individually. It argued that conduct involving sharing legal fees with a nonlawyer or permitting another to direct or regulate the lawyer's professional judgment in rendering legal services, however, resulted in discipline ranging from a reprimand to a suspension, depending on the nature and severity of the conduct.

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[2] On May 20, 2015 the Supreme Court of New York, Appellate Division, Second Judicial Department suspended respondent for a period of three years, retroactive to February 6, 2010.

In its brief to us, the OAE maintained that respondent's conduct in Florida warranted substantially different discipline in New Jersey – a suspension of either three or six months, retroactive to January 7, 2010, the date of her Florida suspension.

The OAE's brief listed, as mitigation, respondent's assertion that, when she signed the Florida consent judgment, she was defending Outreach's meritless lawsuit, which was ultimately dismissed; she was raising a premature infant as a single mother; and she was suffering from post-partum depression, while working on her files and winding down her practice.

In respondent's submission to us, she did not dispute the OAE's procedural history and facts, but provided a more detailed explanation of the relationship between Outreach and RELG. She claimed that Outreach's outside counsel left abruptly and referred all of his clients back to Outreach. Wright, therefore, asked her to take over Outreach's outside litigation, and agreed to provide her with start-up funds to do so. Respondent opened RELG in July 2008, with those funds. During RELG's first week in operation, it agreed to speak to more than 600 clients. Respondent alluded to other attorneys having worked for RELG, but did not specify the number.

Approximately one week after opening Outreach's doors, Wright left for vacation. When the RELG attorneys began meeting with Outreach clients, the clients informed RELG that (1) Outreach already had resolved their problems; (2) their mortgages had already been modified and they were making their new lower payments to Outreach; (3) they did not understand why they needed other attorneys; (4) Outreach had told them to stop paying their mortgages; (5) they believed that Outreach was holding their monthly payments in escrow to "show the judge that they can afford to pay their mortgages but choose [sic] not to;" and (6) they believed that Outreach was their law firm.

Respondent was concerned about the clients' representations and the fact that RELG had not been paid in full. Unable to reach Wright while he was on vacation, respondent retained counsel to determine how to proceed. When Wright returned, he was furious that respondent had retained counsel, and their relationship immediately soured. Wright contacted the police to physically remove respondent and the other attorneys from the office they occupied. According to respondent, the attorneys secured new office space, and notified their clients about RELG's change of address and RELG's responsibilities toward them.

The information that the Outreach clients had divulged to RELG led respondent to believe that Wright and Outreach were

engaged in false or misleading advertising, unauthorized practice of law, and theft or conversion of the clients' funds held in escrow accounts. RELG advised the clients to obtain an accounting of their escrow funds held by Outreach. Any clients who expressed concerns to RELG were referred to the Attorney General's Office.

Instead of providing the accounting to the clients, Wright took retaliatory action against respondent by filing for temporary and permanent injunctions to stop RELG from making statements against Outreach, among other things. According to respondent, Outreach's attorneys filed many and frequent motions against RELG. Several Outreach attorneys were present at every hearing. Respondent, who was in her seventh month of pregnancy at the time, had insufficient means to retain counsel, and was left to defend herself. Wright also moved to refer respondent to the Florida Bar for, among other things, theft of client funds. Respondent, thus, was forced to retain counsel.

The Court upheld Wright's power of attorney and ordered the return of 267 clients and their files to Outreach. The RELG attorneys filed motions to withdraw as counsel for those clients.[3]

Respondent gave birth to her daughter prematurely, became severely depressed, and suffered from post-partum depression,

[3] The record does not clarify what became of the other more than 300 clients.

which was exacerbated by the situation with Wright. She, nevertheless, continued to defend herself against Wright's frivolous lawsuit. Unable to afford rent, respondent relocated to New Jersey to be near family.

While respondent was living in New Jersey, to defend against the Florida Bar's charges, she borrowed $5,000 from her father to hire an attorney. From the start of the investigation through her reinstatement proceedings, the Florida Bar, which had possession of respondent's original bank records, neither permitted her to see them nor returned them to her. Her counsel was unsuccessful in his attempts to amend the language in the consent judgment. Respondent's only options were to sign the judgment or to try the matter, with retained counsel, at an initial fee of $20,000. Respondent did not have the financial resources, or the mental or emotional capacity to defend herself against the charges. Believing she had no alternative, respondent signed the judgment and chose to move on with her life.[4]

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[4] Notwithstanding respondent's claim of the Florida Bar's unreasonableness, Exhibit 11 to the OAE's brief is an October 29, 2009 letter from Florida Bar counsel to respondent's counsel in the ethics matter. Bar counsel agreed to include respondent's mitigation in the consent judgment. Bar counsel's letter stressed that, although respondent had been given "every opportunity" to demonstrate that "either fees were returned and/or that work was completed on behalf of these particular clients," as of the date of the letter, respondent had not

(Footnote cont'd on next page)

Respondent denied that she lacked diligence or failed to communicate with her clients. According to respondent, at the time of the Florida Bar investigation, RELG did not have 616 clients, as the court had ordered the return of 267 of their cases. Many of RELG's clients had decided to retain other counsel and retrieved their files from RELG. Respondent maintained that the only issue with the sixteen specific clients was a fee dispute. The public records reflect, among other things, that two of the sixteen clients presented RELG with checks that were returned for insufficient funds; another client chose new counsel; and still another client signed a non-refundable retainer agreement for which a considerable amount of work had been accomplished. Thus, respondent denied that she knowingly or intentionally violated any of the rules that she had previously admitted violating.

We determine to grant the OAE's motion for reciprocal discipline. Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the

(Footnote cont'd)

submitted any such evidence. Bar counsel, therefore, included the final draft of the consent judgment for signature.

> discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

Pursuant to R. 1:20-14(a)(5), "[a] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Florida, the standard of proof in attorney discipline

matters is the "clear and convincing" standard. Florida Standards for Imposing Lawyer Sanctions §1.3.

Pursuant to R. 1:20-14(b)(3), respondent's consent judgment is conclusive evidence that she violated Florida's ethics rules equivalent to New Jersey's RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 5.4(a) and (c), RPC 5.4(d)(3), and RPC 8.4(a). Although the OAE appears satisfied from its additional investigation that no abandonment of clients occurred, the stipulation stated that (1) "all client files were abandoned and all legal representations for those individuals ceased;" and (2) "numerous clients who had paid and retained the Respondent directly for legal representation were also neglected in that their foreclosure cases were abandoned."

Respondent argued that she did not knowingly or intentionally engage in unethical conduct. We recognize that her version of events is strikingly different from the facts to which she stipulated. We are bound, however, by the Florida court's determination. That determination cannot be challenged here. Should respondent wish to dispute Florida's findings, the proper venue to do so is in the Florida courts.

Other than the abandonment of clients, respondent's most serious violations consist of improperly sharing fees with a nonlawyer and permitting a person who employs or pays the lawyer to direct or regulate the lawyer's professional judgment in rendering

services. RPC 5.4 was enacted to preserve and to ensure an attorney's independent professional judgment. The rationale for the Rule and its predecessor was discussed by the Court in In re Weinroth, 100 N.J. 343, 350 (1985):

> The prohibition of the Disciplinary Rule is clear. It simply forbids the splitting or sharing of a legal fee by an attorney with a lay person, particularly when the division of the fee is intended to compensate such a person for recommending or obtaining a client for the attorney. The policy served by this Disciplinary Rule is to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making the referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in the client. The Disciplinary Rule also serves to discourage overzealous or unprofessional solicitation by denying compensation to a lay person who engages in such solicitation on behalf of a lawyer, or even as to another lawyer unless the latter has also rendered legal services for the client and the fee that is shared reflects a fair division of those services. For these policies to succeed, both indirect as well as direct fee-sharing must be banned so as fully to preserve the integrity of attorney-client relations.
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> The plain terms of the Disciplinary Rules and the salutary policy they serve indicate that infractions are to be regarded as serious matters.
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> [Id. at 349-50; citations omitted.]

In cases involving fee-sharing with a nonlawyer, the discipline has ranged from an admonition to a lengthy suspension, depending on the severity of the lawyer's conduct, the presence and seriousness of other violations, and the lawyer's ethics history. See, e.g., In the Matter of Paul R. Melletz, DRB 12-224 (November 16, 2012) (admonition for attorney who hired a paralegal for immigration matters as an independent contractor and for a few years evenly divided the flat fee charged to immigration clients; in mitigation, the attorney terminated the arrangement as soon as he learned of its impropriety); In the Matter of Ejike Ngozi Uzor, DRB 12-075 (May 29, 2012) (admonition for attorney who permitted a loan-modification entity (nonlawyers) to operate under his law firm name and shared fees charged to the loan-modification clients; the lawyer also violated RPC 5.4(d)(3) (prohibiting a nonlawyer from exercising control over the professional judgment of the lawyer) by allowing the entity's nonlawyers to administer "law firm finances" through the attorney's business account; mitigation included the attorney's inexperience at the time of the misconduct, his bar admission only months earlier, his short-term involvement with the entity, the immediate termination of the relationship once he realized its impropriety, his protection of the entity's clients from harm by working without compensation, and the contribution

of his own funds to pay former staff to complete open files); In the Matter of Geno Saleh Gani, DRB 04-372 (January 31, 2005) (admonition for attorney who contracted with a Texas organization to develop a New Jersey practice to prepare living trusts, made misleading communications about his services, and engaged in other advertising violations; we considered numerous mitigating factors, including the attorney's otherwise unblemished sixteen-year record, his contrition and remorse, his cessation of the improper advertising, the termination of his relationship with the Texas company, his refusal to accept referrals from New Jersey clients, the lack of harm to clients, and the character letters on his behalf); In re Aponte, 215 N.J. 298 (2013) (censure for attorney who improperly shared fees and formed an impermissible partnership with nonlawyers in connection with mortgage modifications and bankruptcy filings, failed to maintain a trust account and professional malpractice insurance, lacked diligence, and engaged in gross neglect and pattern of neglect in the handling of bankruptcy files); In re Lardiere, 200 N.J. 267 (2009) (censure for attorney who improperly shared fees with a company that retrieved surplus funds from sheriff's sales of foreclosed properties, engaged in recordkeeping improprieties, and failed to cooperate with disciplinary authorities); In re Malat, 177 N.J. 506 (2003) (three-month suspension for attorney

who entered into an arrangement with a Texas corporation to review various estate-planning documents on behalf of clients, for which the corporation paid him; the attorney had a previous reprimand and a three-month suspension); In re Krain, 216 N.J. 585 (2014) (six-month suspension for an improper fee sharing arrangement with an immigration paralegal, whom the attorney assisted in the practice of law and for whom he understated earnings on the paralegal's IRS 1099 forms; prior one-year suspension); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who agreed to share fees with a nonlawyer, entered into a law partnership agreement with a nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation (AES) that marketed and sold living trusts to senior citizens, whereby he filed a certificate of incorporation in New Jersey for AES, was its registered agent, allowed his name to be used in its mailings, and was an integral part of its marketing campaign, which contained many misrepresentations; although AES compensated the attorney for reviewing the documents, he never consulted with the clients

about his fee or obtained their consent to the arrangement; he assisted AES in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter for attorney who assisted a nonlawyer in the unauthorized practice of law, improperly divided fees with the nonlawyer without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

Here, the number of instances in which fee sharing occurred is not clear from the consent judgment. We know only that respondent "became responsible for approximately 600 files" under her agreement with Outreach and that she agreed to pay restitution to sixteen clients, ranging in amounts between $500 and $2,248.

Respondent admitted violating RPC 1.3 and RPC 1.4(b), presumably based on her cessation of work on the files after Outreach filed a lawsuit against her. The discipline imposed on attorneys guilty of violating these Rules is generally an admonition, but reprimands have been imposed when other aggravating factors exist.

Admonitions were imposed in the following cases: In the Matter of Christopher Cappio, DRB 15-418 (March 24, 2016) (after

the client had retained the attorney to handle a bankruptcy matter, and signed the bankruptcy petition, the attorney failed to file the petition and to return his client's calls in a timely manner); In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if the deficiencies were not cured; after the complaint was dismissed, he took no action to vacate the dismissal; the attorney also failed to tell the clients that he had never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated; we considered that the attorney had no other final discipline in over thirty-five years at the bar, that staffing problems in his office negatively affected the handling of the foreclosure case, that he was battling a serious illness during the relevant time, and that other family-related issues consumed his time and contributed to his inattention to the matter); and In the Matter of John Joseph Hutt, DRB 15-037 (May 27, 2015) (after the attorney had settled his client's personal injury claim, he failed to resolve outstanding medical liens for more than one year, a violation of RPC 1.3 and RPC 1.15(b); the attorney also failed to reply to his client's inquiries about the status of the liens, a violation of RPC 1.4(b); we considered

that Hutt had no history of final discipline in sixteen years at the bar and that he cooperated with the OAE by readily admitting his wrongdoing and consenting to discipline).

Reprimands were imposed in the following cases: In re Bogard, 220 N.J. 44 (2014) (reprimand imposed because of the significant harm to the clients due to the attorney's gross neglect, lack of diligence, and failure to communicate with the clients; their house was sold at a sheriff's sale); In re Calpin, 217 N.J. 617 (2014) (attorney failed to oppose the plaintiff's motion to strike his client's answer, resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence of some mitigation in the attorney's favor, Calpin received a reprimand because of the "obvious, significant harm to the client," that is, the judgment); and In re Carmen, 201 N.J. 141 (2010) (for a period of two years, the attorney failed to communicate with the clients in a breach-of-contract action and failed to diligently pursue it; aggravating factors were the attorney's failure to withdraw from the representation when his physical condition materially impaired his ability to properly represent the clients and a prior private reprimand for conflict of interest).

In Florida, respondent was also found guilty of charging an unreasonable fee. Fla. Rule 4-1.5. We could not find support in

the record before us for such a violation. Instead, we find that the more applicable violation for the facts recited in the consent judgment is RPC 1.16(d) for respondent's abandonment of clients. Although the stipulation did not specifically cite this Rule, it stated unequivocally that (1) "all client files were abandoned and all legal representations for those individuals ceased;" and (2) "numerous clients who had paid and retained the respondent directly for legal representation were also neglected in that their foreclosure cases were abandoned." We, therefore, find no harm in designating the applicable Rule to respondent's misconduct.

The abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities by neither filing an answer to the complaint nor complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Hoffmann, 163 N.J. 4 (2000) (three-month suspension in a default matter in which the attorney closed his office without notifying four clients; the attorney was also guilty of gross

neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination of representation, and failure to cooperate with disciplinary authorities; the attorney had a prior reprimand and a three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for abandonment of one client and failure to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresenting the status of a matter to a client; prior private reprimand); In re Bock, 128 N.J. 270 (1992) (six-month suspension for attorney, who, while serving as both a part-time municipal court judge and a lawyer, with approximately sixty to seventy pending cases, abandoned both positions by feigning his own death); In re Pierce, 193 N.J. 298 (2007) (one-year suspension for attorney who abandoned a client by receiving a fee, performing no services, and then unilaterally terminating

the representation when evicted from her office; the attorney also lacked diligence in the representation and failed to return the unearned fee to the client; the attorney had received two prior reprimands); In re Diamond, 185 N.J. 171 (2005) (one-year suspension for attorney who, in three matters involving two clients, abandoned the clients and was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to promptly deliver funds to a client or third person, failure to withdraw from the representation where the lawyer's physical or mental condition materially impaired the lawyer's ability to represent the client, and failure to reply to requests for information from a disciplinary authority; the attorney failed to appear at the continuation of the ethics hearing; he suffered from alcohol and drug abuse; prior admonition and reprimand); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for attorney who abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities). But see In re Hughes, 183 N.J. 473 (2005) (reprimand for attorney who abandoned one client by closing his practice, without informing the client or advising her to seek other counsel; altogether, the attorney mishandled three matters by exhibiting a lack of diligence, failing to communicate with

clients, and failing to protect his clients' interests upon termination of the representation; strong mitigating factors were considered).

Here, although the stipulation in Florida did not specifically include a charge of a violation of RPC 1.16(d) (failure to protect a client's interests upon termination of the representation), which typically is cited in abandonment cases, the wording of the stipulation is sufficient for us to find that respondent abandoned an unknown number of clients, along with the other violations to which she admitted. Therefore, we find that none of the exceptions to R. 1:20-14(a)(4) applies, and a three-year suspension is warranted. We determine that the suspension should be retroactive to respondent's suspension in Florida, January 7, 2010. We base this conclusion on the passage of time, respondent's retired status in New Jersey, and the short period over which the misconduct took place (a matter of several months), as well as the circumstances under which her misconduct occurred.

Members Gallipoli, Joseph, and Zmirich voted to impose a prospective three-year suspension. Member Singer abstained.

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 Kirsten Elizabeth Franklin
Docket No. DRB 18-097

Argued: May 17, 2018

Decided: September 4, 2018

Disposition: Three-year Retroactive Suspension

Members	Three-year Retroactive Suspension	Three-year Prospective Suspension	Abstained	Recused	Did Not Participate
Frost	X				
Clark	X				
Boyer	X				
Gallipoli		X			
Hoberman	X				
Joseph		X			
Rivera	X				
Singer			X		
Zmirich		X			
Total:	5	3	1	0	0

Ellen A. Brodsky
Chief Counsel