Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-266
District Docket No. XIV-2017-0261E

In The Matter Of	
Aileen Merrill Schlissel	
An Attorney At Law	

Decision

Argued: October 18, 2018

Decided: January 15, 2019

Johanna Barba Jones appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.[1]

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), based on respondent's four-year suspension in Nevada, for violations of Nevada's RPC

[1] In her oral argument form waiving appearance, respondent indicated that she agreed with the conclusions and recommendations of the trier of fact.

1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15(a) (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 (communications concerning a lawyer's services), RPC 7.2 (advertising), and RPC 7.2A (advertising filing requirements),[2] and RPC 7.3 (communications with prospective clients). In exchange for respondent's entering a guilty plea and consenting to discipline, the Nevada Bar dismissed the charged violations of RPC 8.4(c) (misconduct). It is not clear whether the Supreme Court of Nevada found this violation, because its decision states that respondent admitted violating the rule, notwithstanding the Bar's dismissal of the charge.

The OAE urges us to recommend respondent's disbarment or, in the alternative, to impose a two- to three-year suspension. We determine to impose a six-month suspension to run consecutively to a three-month suspension that the Court imposed on respondent just a few days ago in a prior matter.

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[2] Paragraph (a) of this rule provides, in relevant part that, "[a] copy or recording of an advertisement or written or recorded communication published after September 1, 2007, shall be submitted to the state bar in either physical or digital format within 15 days of first dissemination along with a form supplied by the state bar." The failure to file in accordance with paragraph (a) is grounds for disciplinary action. The Rule has no New Jersey equivalent.

Respondent was admitted to the New Jersey and New York bars in 1997, and the Nevada bar in 2008.

Respondent was temporarily suspended, effective March 7, 2017, for failure to cooperate with an OAE investigation. In re Schlissel, 228 N.J. 161 (2017). She remains suspended to date.

On January 10, 2019, respondent received a three-month suspension for her violations of RPC 1.15(d) (recordkeeping), RPC 5.5(a) (unauthorized practice of law, based on her failure to maintain professional liability insurance for her professional corporations), RPC 8.1(b) (pervasive failure to cooperate with the OAE's investigation, which prevented the OAE from determining whether overdrafts in her trust account impacted client funds and whether she negligently or knowingly misappropriated client funds), and RPC 8.4(d) (conduct prejudicial to the administration of justice, based on her failure to file an affidavit of compliance pursuant to R. 1:20-20).

More specifically, after causing two overdrafts in her trust account, respondent 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 the scheduling of audits. Her failure to cooperate eventually led to her temporary suspension, mentioned above. Ultimately, respondent admitted, in a stipulation, that she had engaged in several recordkeeping violations, including

"recklessly" failing to comply with the requirements of R. 1:20-6, by delegating the safeguarding of trust account records and client files to a third-party company, without ensuring that she would have access to the records at all times. In re Schlissel, ___ N.J. ___ (2019).

The State Bar of Nevada, Southern Nevada Disciplinary Board (NDB) filed two complaints against respondent, on June 8, 2016 (five counts) and on September 20, 2016 (two counts), respectively, charging her with multiple violations of the above RPCs. On October 12, 2016, a formal hearing panel chair granted the NDB's motion to consolidate the complaints.

Thereafter, respondent and the NDB entered into a Conditional Guilty Plea in Exchange for a Stated Form of Discipline (guilty plea). A hearing on the guilty plea occurred on November 9, 2016. On that same day, the NDB issued its findings, conclusions, and recommendation, urging a suspension and restitution. On September 11, 2017, the Supreme Court of Nevada issued an order approving the conditional guilty plea agreement; suspending respondent for four years, effective immediately; and ordering her to pay $34,233.25 in restitution, to deposit an additional $20,000 in trust in the event additional victims surfaced with valid claims for restitution, and to pay costs and fees.

The order summarized respondent's conduct as follows.

Respondent opened and operated two separate "national law firms" to help clients with loan modifications.[3] She maintained a Nevada trust account and a virtual office in Nevada. Her physical office was located in California. Respondent mailed advertisements about her law firm nationwide, but failed to file the advertisements with the Nevada State Bar.

Respondent employed non-attorney "recruiters" who were compensated based on the number of individuals they engaged for loan modification services. Some of the recruiters advised clients to stop paying their mortgages and, instead, to use their mortgage payments to pay the firm's fees. The recruiters often made false promises about the length of the modification process and the amounts of the resulting monthly mortgage payments or the interest rates at the end of the process. Some recruiters contacted clients directly, before the clients reached out to either of respondent's law firms. Some clients were unable to speak to an attorney throughout the entire loan modification process, and communicated with only non-attorney staff members. Finally, although respondent had agreed to hold unearned client funds in trust, she used those funds to pay her overhead costs and payroll.

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[3] Respondent's law firms were primarily engaged in mortgage modifications even though she was not licensed as a debt adjuster in any jurisdiction. In the Matter of Aileen Merrill Schlissel, DRB 18-056 at 3.

In assessing the appropriate discipline to impose, the court weighed four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating and mitigating factors."

The court found that respondent violated duties owed to her clients (diligence, communication, fees, safekeeping property, and communications regarding the lawyer's services) and to the profession (responsibilities regarding nonlawyer assistants, professional independence of a lawyer, unauthorized practice of law, advertising, and advertising filing requirements).

Respondent admitted that her misconduct was intentional. Her clients were harmed because they did not receive the modifications they were promised, they paid fees for services they did not receive, and they received legal advice from non-attorneys.

The profession was harmed because respondent's "unapproved advertising, unauthorized practice of law, and failure to properly supervise nonlawyer assistants was detrimental to the integrity and standing of the bar."

The court considered three aggravating circumstances: respondent's pattern of misconduct, multiple offenses, and the vulnerability of the victims; and three mitigating circumstances: the absence of an ethics history, her

personal or emotional problems, and her cooperative attitude toward the proceedings.

The court determined that the baseline sanction for respondent's misconduct, before considering aggravating and mitigating circumstances, was disbarment, because she admitted that her misconduct was intentional. However, in light of the mitigating circumstances, the court determined that the agreed upon four-year suspension, together with the payment of restitution, was sufficient to serve the purpose of attorney discipline – to protect the public, the courts, and the legal profession, not to punish the attorney. The court, therefore, approved the guilty plea.

The guilty plea provides more specific details. Respondent established the law firms of Merrill & Associates (Merrill) and AMS Legal Group (AMS) to assist clients, in many states across the country, to obtain loan modifications. Respondent maintained a physical law office only in Irvine, California, even though her advertising and firm letterhead implied that Merrill maintained physical offices in many states. On October 8, 2013, respondent opened a Nevada interest on lawyer trust account (IOLTA account), with a California address. The account was converted to a California IOLTA account in December 2013.

Merrill's staff instructed potential clients to mail retainers to the Irvine address, but to make checks payable to Schlissel & Associates PC Trustee Nevada IOLTA Accounts. AMS employees provided different instructions to that company's potential clients.

According to respondent's verified answer to the Nevada complaint, clients were charged a flat fee and were permitted to pay in monthly installments. The firm, however, began working on the clients' files immediately. When work was completed, the firm notified the clients of the specific services performed and the specific fees taken from the retainer. The funds, having been earned, would then be transferred to the operating account. The firm maintained the records on a web-based system called "Leadtrac."[4]

Between 2013 through 2015, respondent reported in her annual disclosures to the State Bar that she did not handle client or third-party funds in the State of Nevada and, therefore, was exempt from the provisions of SCR 78.5. This rule relates to a list of financial institutions approved to hold trust accounts, which are held in a fiduciary capacity in connection with a

[4] Previously, we found that respondent "recklessly" failed to comply with 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 those records at all times." Schlissel, DRB 18-056 at 8.

representation. The rule does not apply to IOLTA funds. IOLTA accounts are a separate class of trust accounts.

Respondent's recruiters were not attorneys. Their responsibilities included actively soliciting potential clients and fielding calls received as a result of advertising flyers that had been sent around the country. The flyers were not a part of the record before us. According to the order approving conditional guilty plea, issued by the Supreme Court of Nevada, respondent failed to file the direct mail advertisements with the State Bar, as Nevada RPC 7.2A required.

Some of respondent's recruiters routinely advised potential clients, who were concerned about providing advance funds for modification services, that their money would be deposited in a "neutral 'escrow'" account and that the firm could take the funds only when services were completed. Similarly, respondent's fee agreements, which were not included in the record before us, provided that client retainers would be held in trust until the funds were earned in phases after work was completed. Respondent, however, "did not comply with this protocol."

The recruiters were compensated based on the number of clients they succeeded in obtaining and who paid for the loan modification services. To induce individuals to sign up for the firm's services, in order to boost the

recruiters' earnings, some of the recruiters made false promises about the firm's ability to obtain "much lower monthly payments, lower interest rates, principal reductions and forgiveness of arrears," and about the length of the process and the extent of attorney involvement on the files.

Respondent maintained that she had contacted attorneys in "various states" to handle cases, but acknowledged that attorneys were not involved in the initial consultation process and that many clients never spoke to an attorney at any point during the loan modification process.

Respondent accused a terminated employee of stealing client information and bookkeeping records, and spreading false accusations about her to clients, through e-mails, that her business was a scam and that she failed to prepare her taxes or maintain her books. Thereafter, many clients fired the firm and demanded the return of their remaining escrow funds. However, respondent had not properly "safekept" the clients' funds and had used their money for payroll and overhead costs. The June 8 and June 20, 2016 complaints alleged, among other things, that respondent stopped accepting new clients, attempted to complete work for clients who had paid retainers, and started to return funds to clients who were owed refunds, but she no longer had the funds to pay all refunds that were due. Respondent admitted these allegations. Respondent's firms went out of business in mid-2015.

Respondent prepared a spreadsheet of funds, totaling about $20,000, that she believed were owed to clients. Only one of the grievants named in the two complaints was listed on the spreadsheet. Respondent acknowledged, therefore, that, in addition to the grievants, other clients who were not listed on the spreadsheet, might be entitled to refunds.

Seven of respondent's former clients specifically were listed in the guilty plea, as follows.

1. In February 2014, William and Julie Chavez retained respondent's firm for a loan modification of property located in Baltimore, Maryland. They paid a $3,495 fee and consulted with a nonlawyer. Because of the Chavezes' combined income, they did not qualify for a loan modification. The information they provided during the pre-approval process had disclosed that information. Therefore, they should not have been accepted as clients. It was only after they had paid the retainer, a month after retaining respondent, that a senior processor sent the Chavezes' file to a Maryland attorney. That attorney notified the Chavezes that they might not qualify for a modification.

In September 2014, they contacted the State Bar for assistance in obtaining a full refund of the fee. Respondent issued a fee refund only after the Chavezes filed a grievance with the bar.

2. In January 2014, Barbara Zak paid respondent's firm $2,995 for a loan modification on property located in Washington State. She wanted her second mortgage modified to a twenty-year loan and her first and second mortgages merged into one payment. A nonlawyer staff member advised Zak to miss a mortgage payment. Ultimately, Zak's bank would offer only a modification to a forty-year loan, which Zak found unacceptable. She, therefore, requested a fee refund, to no avail. Her attempts to receive further information from the firm were fruitless. Zak's log showed that most of her contacts with respondent's firm were with nonlawyers.

3. In February 2014, in response to an advertisement he received in the mail, Keith Gwyn retained respondent's firm at a fee of $2,995 for a loan modification on a Colorado property. In March 2014, he paid the firm an additional $2,995 fee for the modification of a different loan.

Gwyn dealt only with nonlawyer staff and never met or spoke to respondent. A staff member informed him that his retainer would be held in trust until his loans were modified, which would take two-to-three months.

In August 2015, Gwyn complained to the State Bar that, after more than nine months, his loans had not been modified and the firm was not returning his e-mails or telephone calls.

Respondent's records showed that, in May 2014, a Colorado attorney had been assigned to make "the attorney welcome call." That call, however, was not made until July 23, 2014, after the bank had denied Gwyn's modification because he had not exhibited any hardship.

The Gwyn file contained three letters to him, all dated in April 2014, which explained that work had been performed on his case and the retainer had been earned. The funds were deemed earned before Gwyn spoke to an attorney.

After complaining to the State Bar, Gwyn received a $2,995 refund.

4. After receiving an advertisement in the mail, in October 2014, Michelle Rumore retained respondent's firm, for a loan modification on a New Jersey property. Rumore spoke to a nonlawyer, who convinced her that the $3,495 fee would be held in trust pending the loan modification.

Rumore did not speak to respondent until after signing the fee agreement and paying the fee, at which time respondent informed her that the firm "was closing." Respondent's firm neither obtained the modification nor refunded Rumore's fee. Rumore dealt directly with the bank to negotiate her own loan modification.

5. In April 2015, Fred Feetham received a phone solicitation from nonlawyer Leo Diaz, who convinced Feetham to retain respondent's firm to

pursue a loan modification. Diaz stressed that, if Feetham qualified, the firm could secure a more favorable payment plan for him. Diaz told Feetham that if he provided initial paperwork, it would be sent to the underwriting department to ensure that he qualified.

After submitting the requested information, Feetham "received a call back that he 'qualified' for a great modification," and simply needed to pay the fee. Because Feetham was hesitant to proceed, Diaz promised that, if "the loan modification didn't work out," Feetham would get back half of his money. Diaz asked Feetham "what he had to lose."

Feetham submitted the fee, but, thereafter, experienced difficulty communicating with respondent's firm and was repeatedly asked to submit the same documentation and information. During the pendency of the process, Feetham did not speak to an attorney.

When Feetham contacted his bank, he learned that respondent's firm had not submitted any paperwork on his behalf. Once Feetham finally reached respondent, she informed him that the firm was closing. He never received a fee refund.

6. In February 2015, after receiving several mail advertisements from respondent's firm, Solomon Woods, Jr. retained respondent's firm for loan modifications on his first and second mortgages on his Texas property. The

advertisements that Woods had received stated that Merrill was "a nationwide law office with licensed attorneys to practice in all 50 states, including Washington DC." The advertisements had not been filed with the State Bar of Nevada, as required by RPC 7.2A.

Respondent's staff informed Woods that his fee "would go to a neutral escrow company, like Ebay does, so he could be sure that they wouldn't take his money unless they earned it." Respondent's staff induced Woods to retain the firm based on the staff's representations of the likely amount of his mortgage payment. Woods paid the fee in three $1,333 installments. Afterwards, Woods' communications with the firm "went drastically down-hill" and he was repeatedly asked to provide the same paperwork and information.

Once Woods contacted his bank, he learned that respondent's firm had not submitted any paperwork on his behalf.

Woods had not spoken to a lawyer, until he finally "tracked down" respondent, seeking information on the status of his matter. She informed him that he would be contacted the following day. He never received a call or a fee refund, however. He obtained the loan modification on his own.

7. In November 2015, Merrill's employee, Jonathan Davis, contacted Samantha Whatley-Scordo and assured her that she could obtain a loan

modification on her Maryland property. Davis maintained that, at best, Whatley-Scordo would obtain a loan at three percent interest, and, at worst, a loan at four percent interest. Her current $1,149 loan payment would decrease significantly and the results would be achieved in ninety days or fewer.

When Whatley-Scordo informed Davis that she did not have the $3,000 fee, he advised her to discontinue paying her mortgage and, instead, pay Merrill, because she needed to default on her mortgage to qualify for the loan modification. Davis further informed Whatley-Scordo that the bank would likely "forgive the defaulted amount of back-payments."

Thereafter, Whatley-Scordo communicated with two other staff members who repeatedly requested updated paperwork. She never spoke to an attorney. Although she received a loan modification, her monthly payments increased and the defaulted payments were added to the end of the loan.

After repeatedly attempting to obtain a fee refund, Whatley-Scordo "was contacted and told" that, in exchange for agreeing that her matter was resolved, she would receive a $1,000 check. Respondent required a signed release of liability for work performed on Whatley-Scordo's behalf. Although Whatley-Scordo signed the release, she never received the refund.

* * *

On November 9, 2016, respondent testified telephonically at the hearing on the guilty plea. She advanced, in mitigation, the fact that she was not practicing law and was not licensed to practice in California. She had planned to take the California bar exam, but had been unable to do so because, at the time, she was "very sick" from the cancer-suppressing drugs she was taking; she was undergoing a messy divorce; an employee whom she had fired had hacked into her computer system and sent horrible e-mails to her clients; and her father, who was suffering from dementia, had moved in with her.

Respondent explained that she did not maintain a law firm in Nevada, but used a shared "Regis office," for which she paid a monthly rate, as well as an hourly rate when she used the office. She did not maintain any staff in Nevada.

Respondent obtained clients by buying public lists of foreclosures. Advertisements were mailed to prospective clients to explain their services, but they did not make "cold call[s]." The complainant disputed respondent's claim, however, pointing out that respondent's firm had placed cold calls to Whatley-Scordo and Feetham. Moreover, the complainant added that, had respondent submitted her advertisements to the State Bar for approval, the advertisements would have been rejected because respondent had implied that

she had a national law firm with offices throughout the country, which was a misrepresentation. In addition, her business model caused harm to her clients.

On November 9, 2016, the NDB formal hearing panel determined, among other things, that the stipulated facts, as set forth in the plea, accurately reflected the underlying circumstances; that respondent's actions were intentional, because she created a business model that permitted nonlawyers "to provide legal advice to clients, and encouraged the exaggeration of potential results through compensation, based on the number of [paying clients that signed retainers];" that she failed to safekeep clients' funds, even though her fee agreements promised that she would; and that she failed to oversee her staff and contract lawyers.

The OAE's brief to us stated, in a footnote, that the OAE recognized that respondent's conduct was tantamount to the use of runners, a third-degree crime under N.J.S.A. 2C:21-22.1. The OAE cited In re Pajerowski, 156 N.J. 509 (1998) (attorney disbarred for soliciting clients through his office manager/investigator; the attorney knew and condoned the investigator's assisting clients to file false medical claims); and In re Struhl, 189 N.J. 524 (2007), In the Matter of Morton Struhl, DRB 06-270 (December 21, 2006) (slip op. at 9; fn3), (disbarment; the uncharged violations of using runners were found to be "part and parcel of respondent's overall misconduct"). The

OAE noted, however, that it was not pursuing that argument, because that additional charge would not significantly impact the quantum of discipline it was seeking.

The OAE argued that, under R. 1:20-14(a)(4)(E), which governs reciprocal disciplinary proceedings, this matter may warrant different discipline. Specifically, it noted the difference between the Nevada and New Jersey versions of RPC 1.15. In Nevada, RPC 1.15(c) provides: "[a] lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." Citing In the Matter of Daniel James Domenick, DRB 17-176 (November 17, 2017) (slip op. at 12), the OAE stated that, by contrast, the New Jersey Rules do not have such a requirement, unless a specific understanding to that effect has been reached with the client.

The OAE distinguished this case from In re Reyes, 233 N.J. 463 (2018); DRB 17-170 (November 15, 2017) (admonition), because, in Reyes, the attorney took an unearned fee in the absence of an agreement with the client requiring him to hold the fee intact until earned. Thus, in New Jersey, such conduct would be viewed as a violation of RPC 1.16(d) (failure to return an unearned fee). Here, however, an agreement to maintain the fees in the trust account existed. The OAE highlighted the fact that, in her guilty plea,

respondent admitted that: (1) some of the recruiters routinely informed potential clients that their money would be deposited into a neutral escrow account and would be taken by the firm only upon completion of services; (2) respondent's fee agreements provided that she would maintain client retainers in trust until the funds were earned in phases after the work was completed; (3) in her annual disclosures to the Nevada State Bar, she reported that she did not handle client or third-party funds and was, therefore, exempt from the provisions of SCR 78.5; and (4) she did not properly safekeep funds in her IOLTA account, but, instead used the money to pay payroll and overhead.

According to the OAE, "the explicit understanding" exhibited in this matter brings the case within the exception set forth in In re Stern, 92 N.J. 611 (1983) (one-year suspension). In Stern the Court stated "[s]urely a lawyer would be guilty of unethical conduct in those cases in which the dishonest conduct of the attorney consists of receiving advance fees under circumstances such that the attorney knows or should know that the services for which fees were advanced will not be performed by him." Further, the Court held "that absent an explicit understanding that the retainer fee be separately maintained, a general retainer fee need not be deposited in an attorney's trust account. Stern, 92 N.J. at 619.

The OAE, thus, reasoned that respondent's intentional misapplication of client funds should result in her disbarment. Moreover, the fact that she made restitution to some of her clients was legally insignificant.

According to the OAE, from the perspective of the public, there is no distinction between stealing money held in trust for future work not performed and stealing real estate funds or settlement money. In both scenarios, hard-earned client money was given to a lawyer to hold in trust pending certain preconditions and then vanished without entitlement. Both deprivations have an equal impact on the client and have an equal capacity to diminish public confidence in the bar.

In the alternative, the OAE recommended the imposition of a lengthy suspension for respondent's misapplication of unearned fees to which she had no colorable claim, in light of (1) the presence of other ethics offenses; (2) the desirability of parity, if not equality, with the Nevada penalty; and (3) the detrimental impact on the public and the large number of clients affected. In this context, the OAE noted that respondent's conduct violated not only the Nevada and New Jersey RPCs, but also federal law – specifically, 12 C.F.R. §

1015 (2012), entitled "Mortgage Assistance Relief Services" (the MARS rule), conduct for which the Court has imposed terms of suspension.[5]

We determine to grant the OAE's motion for reciprocal discipline. 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." 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 Nevada, "[b]ar counsel shall prove the violations of rules of professional conduct by clear and convincing evidence." Nevada Disciplinary Rules of Procedure, § III, Rule 15.

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 discipline in another jurisdiction was predicated that it clearly appears that:

[5] The MARS rules were issued to prevent business practices that are deceptive or unfair to consumers seeking mortgage modifications.

> (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.

Based on the record in this matter, subsection (E) applies. Typically, in New Jersey, the Court does not recognize a four-year suspension as a form of discipline. "Absent special circumstances, a suspension for a term shall be for a period that is no less than three months and no more than three years." R. 1:20-15A(3). An indeterminate suspension prohibits an attorney from seeking reinstatement for a minimum of five years, unless the Court's Order provides otherwise. R. 1:20-15A(2). Thus, an indeterminate suspension, which is rarely imposed, is the form of discipline that most closely resembles Nevada's discipline. However, neither a four-year suspension nor an indeterminate suspension is appropriate discipline for respondent's misconduct, based on New Jersey precedent.

Although the OAE has proposed an attractive argument – that respondent should be found guilty of knowingly misappropriating fees and, therefore, disbarred – that argument must fail. As established in Stern, in order to recommend respondent's disbarment, we must find that she took the fees without intending to provide the services for which her firms were retained. The facts do not support such a finding. Indeed, the Nevada complaints did not allege that respondent knowingly misappropriated the fees or that she did not intend to provide services. Rather, the complaints alleged that respondent "attempted to complete all the work for clients that had paid retainers, and started to return funds to clients that were owed refunds, but she no longer had the funds to pay all refunds that were due." In addition, respondent's verified answer to the Nevada complaint provided that, notwithstanding that some clients paid their fees in installments, the firm began working on the clients' files immediately. When work was completed, the firm notified the clients of the services provided and the amount of fees taken from the retainer. When the funds were earned, the money was transferred to the operating account.

Because respondent entered into a stipulation of facts of sorts, her conduct was not fully fleshed out. Although the guilty plea stated that respondent did not "comply with the protocol" of taking fees in phases, as earned, from the trust account, it did not specify in what manner she did not

comply or that she knowingly misappropriated the fees. The Supreme Court of Nevada stated only that respondent "used unearned client funds that she was holding in trust to pay payroll and overhead costs" and that she violated duties owed to her client of "safekeeping property." Thus, this record does not establish to a clear and convincing standard that respondent knowingly misappropriated the fees. Admittedly, however, she failed to safekeep her clients' retainers by her failure to "comply with the protocol" set forth in her retainer agreement. Although the record developed in the Nevada proceeding established that respondent intentionally created a business model that allowed nonlawyers to provide legal advice, it did not establish that respondent created that business model with the intent to not provide services. Rather, according to the Nevada Court, respondent's "intentional act" was simply the creation of her business model. Although she failed to "safekeep" the clients' retainers, as demonstrated above, New Jersey does not impose disbarment for that type of misconduct.

Respondent's failure to safeguard the fees is analogous to cases where attorneys have breached escrow agreements by improperly releasing funds. Although these attorneys have been disciplined, they have not been disbarred. See, e.g., In the Matter of Annette P. Alfano, DRB 15-079 (May 27, 2015) (admonition for attorney who improperly released escrow funds that had been

entrusted to her by third parties in connection with a canceled real estate matter, without the express authorization of the parties); In the Matter of Michael D. Landis, DRB 09-395 (March 19, 2010) (admonition for attorney who disbursed an $85,500 real estate deposit to his client, the buyer, in the face of a contractual dispute and contrary to a contractual clause providing for the deposit of the funds with the court in the event of a disagreement between the parties); In the Matter of Karl A. Fenske, 158 N.J. 144 (1999); DRB 98-211 (May 25, 1999) (admonition imposed where the attorney who was obligated to hold a real estate deposit in escrow, released it to his client, the buyer, when a dispute arose between the parties); In re Flayer, 130 N.J. 21 (1992) (reprimand for attorney who made unauthorized disbursements against escrow funds); and In re Power, 91 N.J. 408 (1982) (public reprimand for improperly disbursing escrow funds to an architect in satisfaction of the architect's bill, after being falsely told by the client that the prospective purchasers of property had authorized the disbursement). Thus, by analogy, we view respondent's breach of her fee agreement, in light of the complainant's comments, as comparable to these breach of escrow agreement cases.

Although we do not find respondent guilty of knowing misappropriation, she, nevertheless, engaged in serious, "intentional" conduct, by creating a "model" to improperly solicit clients throughout the country, in states where

she was not admitted to practice law, through direct mail advertisements and cold calls. Respondent's conduct was similar to the attorney's conduct in In re Ehrlich, 235 N.J. 321 (2018), In the Matter of Richard Eugene Ehrlich, DRB 17-347 (April 4, 2018). In that case, a motion for reciprocal discipline for conduct occurring in Florida, the Court imposed a three-month suspension. The attorney's ethics infractions stemmed from nonlawyers, acting on behalf of his firm, making interstate solicitations for loan modification work, and from the attorney's charging illegal fees, failing to act diligently on the loan modifications, failing to supervise his nonlawyer employees, and practicing law in a state where he was not admitted. The nonlawyers, for the most part, communicated with the clients. Ehrlich admitted that he never met with or talked to the twenty-six grievants. Id. at 5.

The nonlawyers solicited clients, some of whom resided in Maryland. The Maryland residents were charged "upfront retainer fees," which was deemed an improper practice because Ehrlich was not a licensed attorney in that state. Ibid. Over the course of a few years, one of Ehrlich's employees had obtained 350 to 400 clients, through his "system of people" (parishioners from several churches and referrals from a loan modification client). Ibid.

When Ehrlich learned that grievances had been filed, the firm fired one of its "recruiters" and began winding down the firm's loan modification

operations. Ehrlich made full restitution, totaling $98,855, to the grievants. Id. at 6.

We found that Ehrlich's conduct violated RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 5.3(a), (b), and (c)(1) (failure to properly supervise a nonlawyer employee and ratifying conduct that violated the RPCs), RPC 5.5(a)(1) and (2) (unauthorized practice of law – practicing law in a state where the attorney is not admitted), RPC 7.3(b)(5) (improper written communication with a prospective client), and RPC 8.4(a) (violating or attempting to violate the RPCs by knowingly assisting or inducing another to do so). Id. at 17.

In assessing the appropriate discipline to impose, we analogized the attorney's conduct to the use of runners (trolling for personal injury clients by various methods, among others, monitoring accident reports or directly contacting hospital victims) because of the similarities in the employees' conduct. Id. at 22.

In cases involving the use of runners, the discipline has ranged from a three-month suspension to disbarment, depending on mitigating and aggravating circumstances, including the presence of other serious ethics offenses. See, e.g., In re Gross, 186 N.J. 157 (2006) (three-month suspended

suspension for attorney's use of a paid runner on at least fifty occasions over a two-year period; a mitigating factor was that the attorney had inherited the system from his father); In re Pease, 167 N.J. 597 (2001) (three-month suspension for attorney who paid a runner for referring fifteen prospective clients and for lending money to one of the clients; mitigation included the attorney's lack of an ethics history, significant community service, and the fact that the misconduct occurred over a four-month period, ten years earlier, when the attorney was relatively young and inexperienced); In re Berglas, 190 N.J. 357 (2007) (one-year suspension on a motion for reciprocal discipline; attorney paid third parties for referring two hundred legal cases over a three-year period; he also shared legal fees with a nonlawyer); In re Frankel, 20 N.J. 588 (1956) (two-year suspension for attorney who paid a runner twenty-five percent of his net fee to solicit personal injury clients); In re Introcaso, 26 N.J. 353 (1958) (three-year suspension for attorney who used a runner to solicit clients in three criminal cases, improperly divided legal fees, and lacked candor in his testimony); In re Pajerowski, 156 N.J. 509 (1998) (attorney disbarred for using a runner, for almost four years, to solicit personal injury clients, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients); and In re Shaw, 88 N.J. 433 (1982) (attorney disbarred for using a runner to solicit a personal injury client, purchased the

client's cause of action for $30,000, and settled the claim for $97,500; among other violations).

Cases involving the violation of MARS are also instructive. See, e.g., In re Velahos, 220 N.J. 108 (2014) (Velahos I) (censure for attorney who, with his wife, a nonlawyer, provided loan modification services in at least four client matters; the attorney required advance payments to begin the process, in violation of MARS or comparable state laws; in two of the matters, he offered services in a jurisdiction where he was not licensed to practice law; in one of the jurisdictions, the violation of the state's debt adjusting act was a criminal misdemeanor; and he allowed his wife to use his law firm's name and address in her communications with clients; violations of RPC 5.4(b), RPC 5.5(a), RPC 8.4(b), and RPC 8.4(c)); and In re Velahos, 225 N.J. 165 (2016) (Velahos II) (six-month suspension for attorney who fraudulently collected advance fees in relation to the representation of clients in mortgage modification matters, in violation of MARS; he also acted as a debt adjuster without a license, a fourth-degree crime in New Jersey; over the course of two years, the attorney collected or attempted to collect a total of $216,946.92 in illegal advance fees from 117 clients (thirty-one of the clients were residents of states in which the attorney was not licensed to practice law, a violation of RPC 5.5(a)), engaged in a pattern of misrepresentations to his clients and the public through his

advertising and agreements, made misrepresentations to the OAE, and practiced law while ineligible; an aggravating factor was the attorney's censure for similar misconduct).

Here, respondent's conduct included lack of diligence, failure to communicate with the clients, failure to safeguard client fees, and false or misleading advertising. The Nevada court also found respondent guilty of RPC 1.5 (fees), RPC 5.4 (professional independence of a lawyer), RPC 7.1 (communications concerning lawyer's services), and RPC 7.2A (advertising filing requirements).[6] None of the documents specify the particular section of the Rule charged. Moreover, there is no New Jersey equivalent for RPC 7.2A. Nevada RPC 1.5, relating to the reasonableness of fees, among other things, is not supported by the record. It appears that the more applicable rule would have been New Jersey RPC 1.16(d), which requires that, upon termination of the representation, the attorney return the unearned portion of the fee.[7] As to Nevada RPC 5.4, the Rule relates to (a) sharing legal fees with a nonlawyer, (b) forming a partnership with a nonlawyer, (c) permitting another to direct or

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[6] As noted previously, the State Bar of Nevada agreed to dismiss the RPC 8.4 (misconduct) charge.

[7] We note that the OAE did not allege a violation of RPC 1.16(d). Thus, we do not make that finding. See R. 1:20-4(b).

regulate the lawyer's professional judgment in rendering legal services, and (d) practicing in the form of a professional corporation or association. The record before us supports a violation of subsection (a), to the extent that respondent's employees' compensation was tied to the number of paying clients they signed up for representation.

In sum, respondent is guilty of violating of RPC 1.3, RPC 1.4(b), RPC 1.15(a), RPC 5.3, RPC 5.4(a), RPC 5.5(a), and RPC 7.1. In comparison to the above cases, respondent's conduct was not as egregious as the attorney's conduct in Velahos II (six-month suspension) where the attorney violated MARS, acted as a debt adjuster without a license, and collected advance fees from 117 clients, totaling $216,946.92. More akin to respondent's conduct is Ehrlich, which involved twenty-six cases. There, we determined to impose a three-month suspension for the attorney, who had a business model similar to respondent's. Ehrlich, like respondent, was guilty of failure to supervise nonlawyer employees and engaged in the unauthorized practice of law. In Ehrlich, we pointed out that, once the attorney learned that a grievance had been filed against him, and he realized that he had been involved in unethical conduct, he fired his "recruiter," took steps to "unwind that part of his practice," and refunded fees to the grievants. Ehrlich, DRB 17-347 at 26-27.

We also considered that Ehrlich had received a three-month suspension in Florida and that he had no ethics history in his thirty years of practice.

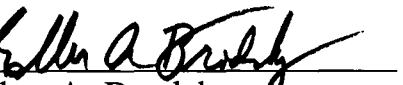
Here, respondent received a four-year suspension in Nevada, is temporarily suspended, and has a three-month suspension pending with the Court. The number of grievants listed in the guilty plea is only seven with no specific mention of how many other clients were affected. In comparison, Ehrlich's conduct reached 117 clients. Here, respondent was ordered to reimburse clients in the amount of $34,233.25, and to deposit $20,000 in trust, to reflect the amount she "believed" that she still owed clients, an amount significantly less than the amount reimbursed in Ehrlich, $98,855.

Although respondent entered into a guilty plea and agreed to a four-year suspension in Nevada, the record before us does not support such severe discipline. Respondent's misconduct, however, was serious and, standing alone, warrants a three-month suspension. When viewed in the context of her temporary suspension and the pending three-month suspension recommendation, and even after consideration of respondent's personal circumstances, we determine to impose a six-month suspension, as in Velahos II. We further determine that the suspension should run consecutively to the three-month suspension that the Court imposed on January 10, 2019.

Chair Frost voted to impose a one-year suspension. Member Gallipoli voted to recommend respondent's disbarment. Member Joseph did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Aileen Merrill Schlissel
Docket No. DRB 18-266

Argued: October 18, 2018

Decided: January 15, 2019

Disposition: Six-Month Suspension

Members	Six-Month Suspension	One-Year Suspension	Disbar	Recused	Did Not Participate
Frost		X			
Clark	X				
Boyer	X				
Gallipoli			X		
Hoberman	X				
Joseph					X
Rivera	X				
Singer	X				
Zmirich	X				
Total:	6	1	1	0	1

Ellen A. Brodsky
Chief Counsel