Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-302
District Docket No. XIV-2017-0556E

In The Matter Of

Rhashea Lynn Harmon

An Attorney At Law

Decision

Decided: February 21, 2019

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The two-count formal ethics complaint charged respondent with violations of RPC 1.4(b) (failure to communicate with a client), RPC 1.16(c) (failure to comply with applicable law when terminating a representation), RPC 1.16(d) (upon termination of the representation, failure to take steps reasonably practicable to protect a client's interests), and RPC 8.4(d) (conduct prejudicial to the

administration of justice) (count one); and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count two).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2012, and to the New York bar in 2011. During the relevant time frame, she maintained a law practice in Philadelphia, Pennsylvania. She has no disciplinary history.

Service of process was proper in this matter. On May 24, 2018, the OAE sent a copy of the formal ethics complaint to respondent, at her Philadelphia law office address, by certified and regular mail. According to the United States Postal Service (USPS), the certified mail was never delivered and could not be located; the regular mail was not returned.

On June 21, 2018, the OAE sent a "five-day" letter to respondent, at her Philadelphia law office address, by certified and regular mail, informing her that, unless she filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). According to the

USPS, the certified mail was "currently in transit . . . as of June 25, 2018," and was not confirmed as delivered; the regular mail was not returned.

On July 17, 2018, the OAE sent a copy of the formal ethics complaint to respondent, at her Philadelphia law office address, by United Parcel Service (UPS). UPS confirmed to the OAE that the package was delivered on July 18, 2018, and accepted by "Alex."

On August 15, 2018, the OAE sent a second "five-day" letter to respondent, at her Philadelphia law office address, by UPS, with the same warning contained in the June 21, 2018 letter. UPS confirmed to the OAE that the package was delivered on August 16, 2018, and accepted by "Alkins."

Because respondent had not filed an answer to the complaint, the OAE certified the record to us as a default.

We now turn to the allegations of the complaint. In 2017, respondent represented Clay Evans, in the Superior Court of New Jersey, Gloucester County, in defense of a criminal charge that he had violated conditions of his lifetime supervision imposed in connection with a prior conviction. On September 19, 2017, the Honorable Robert Becker, J.S.C. reported to the District IV Ethics Committee (DEC) that respondent had failed to appear for a scheduled criminal jury trial. Judge Becker reported to the DEC that, on September 11, 2017, respondent had failed to appear for a pretrial hearing, but

subsequently had attended jury selection proceedings, on September 12 and 13, 2017. On September 13, 2017, Judge Becker informed Evans, respondent, and Assistant Prosecutor Staci Sheetz that the trial would commence on September 19, 2017 at 8:45 a.m. On September 15, 2017, Assistant Prosecutor Sheetz told Judge Becker that the Philadelphia Court of Commons Pleas had issued a bench warrant for respondent's arrest, relating to a trespassing charge, which remained active.

At 5:11 p.m., on September 18, 2017, the day prior to the trial, respondent notified Assistant Prosecutor Sheetz, copying Judge Becker and his law clerk, via e-mail, that she was "no longer the attorney on the matter . . . Evans is representing himself." Attached to the e-mail was a letter of the same date, wherein respondent admitted that she had missed court on September 11, 2017, and had arrived late on September 12, 2017. The letter further stated "[t]ake note that this correspondence represents my withdraw [sic] as [attorney for Evans] . . . He will represent himself from this date forward and I will function as his private international advisor along with Chief Osiris, Foreign General Counsel." The letter contained multiple accusations of prosecutorial misconduct, in addition to numerous "sovereign citizen" elements and citations

to biblical passages.[1] On September 19, 2017, respondent failed to appear for the commencement of the trial. Both Judge Becker and Evans, who was present in court with his family, expected respondent to appear and to defend Evans against the charges. After several unsuccessful attempts to contact respondent, Judge Becker was forced to declare a mistrial. Respondent made no further contact with the court.

Judge Becker asserted that "the mistrial resulted in two and a half weeks of wasted court time," and noted that respondent had been provided written notice of the trial date, had not been released from the representation of Evans by the court, and, therefore, "could not unilaterally decline to represent Evans."[2]

On September 19, 2017, after failing to appear for the trial, respondent again e-mailed Assistant Prosecutor Sheetz, characterizing the arrest warrant as "unfounded and baseless," claiming she had referred Sheetz to the

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[1] Respondent identifies as a "sovereign citizen," a political movement of people who oppose taxation, question the legitimacy of government, and believe they are not subject to the law.

[2] R. 1:11-2 provides that, after the entry of a plea, an attorney may withdraw without leave of court only with the client's written consent, an executed substitution of attorney, and the satisfaction of other conditions, including certifications "that the withdrawal and substitution will not cause or result in delay."

Department of Justice and the International Criminal Court for her "plan to falsely incarcerate indigenous people," which constituted "[g]enocide," and concluded with "[c]arry on with your colonial justice."

On October 20, November 15, and December 21, 2017, the OAE sent a copy of the ethics grievance underlying this matter to respondent, at her Philadelphia law office address, directing her to submit a reply. Additionally, an OAE investigator left voicemail messages for respondent, on December 4 and 18, 2017, requesting a return telephone call regarding the grievance. On December 29, 2017, the OAE received a written response from respondent, on letterhead reflecting her Philadelphia law firm address, wherein she "rejected all allegations of [unethical conduct] and noted she had operated in compliance with the New Jersey and United States Constitutions as well as 'The International Declaration of the Rights of Indigenous Peoples.'"

On January 4 and February 12, 2018, the OAE sent letters to respondent, at her Philadelphia law office address, and directed her to appear for a demand interview. Respondent neither replied to the OAE nor appeared for the demand interview.

Following a review of the record, we find that the facts recited in the formal ethics complaint support all of the charges of unethical conduct. Respondent's failure to file a verified answer to the complaint is deemed an

admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In September 2017, respondent was defending Clay Evans against serious criminal charges, in the Superior Court of New Jersey, Gloucester County. Following jury selection in the matter, she failed to appear for a scheduled jury trial. She had received both verbal and written notice of the trial date, and had not been released from the representation of Evans by the client or the court, as R. 1:11-2 requires. Notwithstanding, in both her September 18, 2017 e-mail and letter to the assistant prosecutor, respondent asserted that Evans would be representing himself at trial. Yet, Evans and his family had expected respondent to appear to defend him at trial.

After several unsuccessful attempts to contact respondent, Judge Becker was forced to declare a mistrial, resulting in a waste of judicial resources. Judge Becker recounted that respondent made no further contact with the court.

Respondent's conduct in respect of Evans' scheduled trial violated multiple RPCs. Her failure to inform Evans that she would refuse to appear for his trial, without prior notice or discussion, violated RPC 1.4(b). Moreover, her improper, unilateral decision to cease representing Evans, despite the express requirements of R. 1:11-2, combined with her baseless assertions that

he had determined to assume his own representation at trial, violated both RPC 1.16(c) and (d). Finally, her improper termination of the representation caused unjustifiable delay, and wasted the resources of the Superior Court, in violation of RPC 8.4(d).

Although respondent replied to the ethics grievance, she failed to appear for demand interviews or to file a verified answer to the complaint, which had been served on her at the same Philadelphia law office address. Respondent, thus, violated RPC 8.1(b).

In summary, we determine that respondent violated RPC 1.4(b), RPC 1.16(c), RPC 1.16(d), RPC 8.4(d), and RPC 8.1(b).

The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014) (attorney failed to send the client an invoice for the time spent on her matrimonial case and ignored her e-mail and telephone calls seeking an accounting of the work he had performed and the amount she owed, a violation of RPC 1.4(b); in mitigation, we considered that the attorney had no disciplinary history, and that his misconduct seemed to be an isolated event that may have been exacerbated by the confluence of several random

events); In the Matter of William Robb Graham, DRB 13-274 (January 23, 2014) (attorney, who filed a claim with the Veterans' Administration on behalf of his client, failed to notify the client that the claim had been dismissed; failed to discuss the options available to the client after the dismissal; and failed to respond to the client's request for information, including the return of his file, a violation of RPC 1.4(b); we found, in mitigation, that the attorney had no prior discipline, admitted his wrongdoing, and was beset by illness at the relevant time); and In the Matter of Dan S. Smith, DRB 12-277 (January 22, 2013) (attorney failed to inform his client that his case had been dismissed on summary judgment, as had the appeal from that order; a violation of RPC 1.4(b)).

Few reported disciplinary cases relate to attorneys guilty of violating RPC 1.16(c). In one such case, In re Saavedra, 162 N.J. 108 (1999), a three-month suspension was imposed. There, the attorney unilaterally withdrew from the representation of a minor in connection with a delinquency complaint. When the juvenile's family failed to pay Saavedra's fee, he left the courthouse without notifying the judge, who then rescheduled the matter. When the juvenile appeared before the judge in a different matter, another attorney informed the judge that Saavedra was no longer representing the juvenile. Because the trial date already had been set in the first matter, that attorney was

directed to inform Saavedra that he could not unilaterally withdraw from the representation and was required to file a motion to be relieved as counsel. When Saavedra appeared later that day, the judge informed him that it was unlikely that such a motion would be granted at that late date.

Saavedra neither appeared for the rescheduled trial nor filed a timely motion to withdraw from the representation. The judge again adjourned the trial. The judge received Saavedra's motion the day after the scheduled trial, denied it, and required Saavedra to appear at the rescheduled trial. Saavedra again failed to appear.

Saavedra was found guilty of having violated RPC 1.16(c), as well as RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In imposing a three-month suspension, we considered Saavedra's significant disciplinary record, which included a private reprimand, a reprimand, and a three-month suspension.

Further, in In re Kern, 135 N.J. 463 (1994), after twenty-six days of a medical license hearing before the Office of Administrative Law (OAL), Kern moved to be relieved as counsel, on the ground that his clients had failed to pay fees and costs then due, in the amount of approximately $85,000. The Administrative Law Judge (ALJ) was primarily concerned with the integrity of

the administration process and with the clear prejudice that would result, if Kern were permitted to step away at that late stage of the proceedings, given that the motion was based primarily on a fee dispute. Anticipating that the complex administrative proceeding would likely continue for another twenty-five to fifty days, the ALJ denied the attorney's application. Following that determination, after Kern's several vigorous attempts to be relieved as counsel proved unsuccessful, he refused to appear when the administrative hearings resumed.

We found that, once the OAL issued an order, regardless of the grounds advanced by the attorney, "he had an absolute obligation" to continue to represent his client, absent a contrary order from a higher court or tribunal. Kern could not unilaterally terminate that representation.

In imposing a reprimand, we considered mitigating factors, including the attorney's unblemished disciplinary record and the fact that he found himself in difficult circumstances, "when he was forced to continue to represent individuals who engaged in a pattern of threats against him and who themselves recognized that such threats rendered effective representation extremely difficult." We also considered that the attorney's actions, although misguided, were the result of his sincere belief that it was ethically impermissible for him to continue his representation.

In respect of violations of RPC 1.4(b) and RPC 1.16(d), attorneys with no disciplinary history receive admonitions, even when accompanied by other, non-serious ethics infractions. See e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (after attorney learned that a complaint had been administratively dismissed in error, he failed to take action to reinstate the complaint, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation); In re Cameron, 196 N.J. 396 (2007) (attorney twice permitted a personal injury matter to be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); and In the Matter of Vera E. Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel).

Admonitions are typically imposed for failure to cooperate with disciplinary authorities, 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 DEC

investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (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, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

Here, respondent's most serious ethics infraction was her improper and unilateral termination of the representation of Evans, on the eve of his criminal jury trial. Like the attorney in Saavedra, who was suspended for three months, respondent failed to comply with the express provisions of R. 1:11-2, by failing to appear for a scheduled jury trial. Unlike the attorney in Saavedra, however, respondent does not have a significant disciplinary history. Respondent, however, does not enjoy the compelling mitigation considered in Kern, where the attorney received only a reprimand for his refusal to appear at scheduled administrative hearings, despite his "absolute obligations" to continue to represent his client, absent a court order to the contrary. That

attorney had no prior discipline, had been repeatedly threatened by his clients, and held a sincere belief that it was ethically impermissible for him to continue the representation. Thus, based on applicable precedent, respondent's violation of RPC 1.16(c), standing alone, warrants a censure. In light of her additional violations of RPC 1.4(b), RPC 1.16(d), RPC 8.1(b), and RPC 8.4(d), a term of suspension is the appropriate quantum of discipline.

We also consider, in aggravation, the default status of this matter. "[A] respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). The only mitigation we consider is respondent's lack of a disciplinary history, but we gave this factor little weight because respondent was a licensed attorney for only five years when the misconduct occurred.

Given the default status, and the lack of compelling mitigation to neutralize the effect of Kivler, we determine to impose a three-month suspension.

Member Zmirich voted to impose a six-month suspension. Member Gallipoli voted to recommend respondent's disbarment. Member Rivera did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Rhashea Lynn Harmon
Docket No. DRB 18-302

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Disposition: Three-Month Suspension

Members	Three-Month Suspension	Six-Month 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