

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-375
District Docket No. VI-2018-0030E

In the Matter of :
Ciatta Z. Baysah :
An Attorney At Law :

Decision

Decided: June 12, 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 District VI Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.4, presumably (c) (failure to explain a matter to the extent reasonably necessary for the client to make informed decisions about the representation) and RPC 8.4, presumably (c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2006, New York in 2007 and the District of Columbia in 2009. She has no prior discipline. On August 28, 2017, respondent was declared ineligible to practice law for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. She remains ineligible to date.

Service of process was proper in this matter. On May 22, 2018, respondent verified her correct home address in e-mail correspondence with the Office of Attorney Ethics. By letter of the same date, the DEC sent a copy of the complaint, by certified and regular mail, to that address. The United States Postal Service (USPS) website indicated delivery of the certified mail to a post office box in New York, for pickup on May 29, 2018. Neither the certified mail receipt card nor the regular mail was returned.

On September 5, 2018, the DEC sent a letter to respondent, at the same home address, also by regular and certified mail, informing her that, if she failed to file an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would

be amended to include a charge of a violation of RPC 8.1(b). The USPS website indicated delivery of the certified mail to a New York post office box on September 7, 2018. Neither the certified mail receipt card nor the regular mail was returned.

As of September 27, 2018, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to the Board as a default. We now turn to the allegations of the complaint.

From 2006 through October 2010, respondent was employed as an associate attorney in the Akin law firm. On September 17, 2006, Jacqueline Bissah retained the law firm to represent her in a divorce. In 2007, Bissah's case was assigned to respondent, who handled it under partner supervision.

While at the Akin firm, respondent filed two motions to enforce litigant's rights. The court decided the first motion in August 2008, and the second one in January 2010.¹ In October 2010, respondent left the Akin firm to take an associate position with the Dimentman law firm. Bissah transferred her matter to the Dimentman firm so that respondent could continue to work on her divorce.

¹ The complaint does not name the court where the divorce was venued.

According to the complaint, respondent made multiple e-mail misrepresentations, presumably to Bissah, that she had filed a third motion to enforce litigant's rights in late 2010, and that the court had scheduled the matter for consideration in early 2011. Respondent, however, had not filed a third motion.

The complaint charged that respondent's "failure to keep her client adequately and accurately informed and her deceit and misrepresentation of the facts constituted a violation of RPC 1.4 (Communication) and RPC 8.4 (Misconduct)."

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

From 2007 through early 2011, respondent was the attorney assigned to handle Bissah's family court matter. She first handled the case while working as an associate attorney at the Akin firm, during which motions to enforce litigant's rights were decided in August 2008 and January 2010.

Respondent should have filed a third motion to enforce litigant's rights, but failed to do so. After October 2010, when she joined the Dimentman firm, she sent multiple e-mails, presumably to Bissah and perhaps to others, falsely claiming that she had filed a third motion. Furthermore, she falsely claimed that the court had scheduled the matter for consideration in early 2011. Respondent's false statements constituted misrepresentations, in violation of RPC 8.4(c).

Respondent also failed to communicate important events in the case to Bissah. For example, it was crucial that Bissah know the circumstances surrounding the third motion to enforce litigant's rights. Yet, respondent failed to provide her client with the critical information that she never filed one. Had Bissah known that, she would have been in a far better position to make informed decisions about respondent's overall representation. Respondent's failure to communicate that information to her client violated RPC 1.4(c).

Finally, the DEC's September 5, 2018 letter to respondent served to amend the complaint to include a charge that she failed to cooperate with disciplinary authorities, for which she is guilty of having violated RPC 8.1(b).

In summary, respondent violated RPC 1.4(c), RPC 8.1(b), and RPC 8.4(c).

A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if

the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); in addition, the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting that motion, or that the court had dismissed her complaint for failure to serve answers to interrogatories and to comply with the court's order, in violation of RPC 1.4(c); violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2 also found); In re Ruffolo, 220 N.J. 353 (2015) (attorney made assurances to the client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that a statement that the client should expect a monetary award in the near future was also false, thereby violating RPC 8.4(c); the attorney had permitted his client's case to be dismissed, never working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found); and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, that both cases remained pending, a

violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's unblemished thirty-four years at the bar was outweighed by his inaction, which left the client with no legal recourse).

Like the attorney in Dwyer, above, respondent made misrepresentations to her client by failing to inform her, despite ample opportunity to do so, that she had failed to file a third motion to enforce litigant's rights. Further, she misrepresented to her client that the court had scheduled the matter to be heard in early 2011. Respondent, like the attorneys in Dwyer, Ruffolo, and Braverman, failed to adequately communicate with her clients about their matters.

With a reprimand as the baseline sanction for respondent's misconduct, in our view, this case requires greater discipline, because of the default nature of the proceedings. "[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).

Therefore, we determine to impose a censure.

Members Gallipoli and 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
Ellen A. Brodsky
Chief Counsel

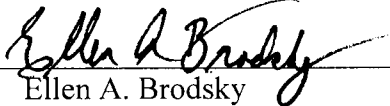
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ciatta Z. Baysah
Docket No. DRB 18-375

Decided: June 12, 2019

Disposition: Censure

<i>Members</i>	Censure	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli			X
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2


Ellen A. Brodsky
Chief Counsel