

fact in connection with a disciplinary matter), RPC 8.1(b) (failure to reply to a reasonable demand for information from a disciplinary authority), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 1993 and the New York bar in 1996. She was temporarily suspended, effective April 25, 2016, for failure to comply with a fee arbitration determination. In re Rys, 224 N.J. 442 (2016). She remains suspended to date.

Respondent has been ineligible to practice law for failing to comply with three attorney regulatory requirements. She has been ineligible to practice since August 25, 2014, for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund); since November 17, 2014, for failure to comply with continuing legal education requirements; and since October 27, 2015, for failure to comply with the Interest on Lawyers' Trust Accounts program.

Service of process was proper in this matter. On November 7, 2018, the OAE sent a copy of the complaint, by regular and certified mail, to

respondent's last known home address listed in the Fund's records and to her office address in New York City.

The regular and certified mail sent to respondent's office address was returned stamped "unable to forward." The regular mail sent to respondent's home address was not returned. On December 14, 2018, the certified mail sent to respondent's home address was returned stamped "unclaimed," and indicated three unsuccessful attempts to deliver the letter.

On December 13, 2018, the OAE sent a letter to respondent, by regular and certified mail, to the same office and home addresses. The letter notified respondent that, if she did not 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 to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b).

The certified mail sent to respondent's home address was returned with the notation "return to sender, not deliverable as addressed, unable to forward." The regular mail was not returned. The certified mail sent to respondent's office address was returned with the notation "return to sender, temporarily away, unable to forward." The regular mail was not returned.

As of January 16, 2019, respondent had not filed an answer to the complaint, and the time within which she was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

By letter dated August 19, 2015, the Honorable Theresa E. Mullen, J.S.C., Superior Court of New Jersey, Union County, notified the OAE that, while respondent was administratively ineligible, she had entered a notice of appearance, dated August 14, 2015, together with a certification and attachments on behalf of her client, R.G.B, in connection with a child support motion. On August 17, 2015, respondent appeared for oral argument on the motion.

Prior to the return date of the motion, the judge's clerk had discovered that respondent was listed on the Family Automated Case Tracking System, as administratively ineligible, which Judge Mullen confirmed with the Fund. At the August 17, 2015 motion hearing, the judge notified respondent that she was not eligible to practice law and, therefore, could not represent R.G.B. Respondent then requested permission for her client to appear pro se in the child support action.

Following the judge's referral, an OAE investigation ensued. During a February 17, 2016 interview, respondent misrepresented to the OAE that she

had accompanied R.G.B. to the motion hearing for "moral support" or "in case he had a question" and that she had told the judge, "[y]our Honor, I am so sorry. I'm not even doing anything here. I'm just here to support [R.G.B.]. I'm not arguing" The August 17, 2015 motion transcript reveals, however, that respondent appeared on behalf of R.G.B. and her statement to the OAE was false.

Further, during the OAE interview, respondent admitted that she did not maintain an attorney trust account at that time, having closed her trust and business accounts on December 23, 2015. She, therefore, failed to maintain a trust account from December 23, 2015 to February 17, 2016 (the date of the OAE interview), as R. 1:21-6(a)(1) requires.

The complaint charged respondent with violations of RPC 1.15(d) and R. 1:21-6(a)(1) and (2) for failing to maintain trust and business accounts; RPC 5.5(a)(1) for representing a client in a family court matter while administratively ineligible; and RPC 8.1(a) and RPC 8.4(c) for knowingly making a false statement to the OAE that she was not appearing in court as an attorney.

In another matter, respondent represented a debtor, P.S., in connection with a bankruptcy petition filed in the United States Bankruptcy Court, District of New Jersey. Despite knowledge of her ineligibility in the R.G.B. matter,

respondent failed to remedy her status and then appeared on behalf of P.S. at a May 12, 2016 meeting of creditors.¹ The bankruptcy trustee questioned P.S., who gave sworn testimony at the meeting of creditors. During an August 4, 2016 OAE interview, respondent admitted knowing that she was administratively ineligible, when she appeared on P.S.'s behalf at the meeting of creditors.

New Jersey L.Civ.R. 101(b) provides that, "[a]ny New Jersey attorney deemed ineligible to practice law by order of the New Jersey Supreme Court entered pursuant to New Jersey Court Rule 1:28-2(a) [non-payment of the annual assessment to the Fund] shall not be eligible to practice law in this Court during the period of such ineligibility." Therefore, respondent was not eligible to practice law in bankruptcy court when she represented P.S.

In addition, as New Jersey L.Civ.R. 104.1(b)(1) requires, respondent failed to report to the Clerk of the United States District Court for the District of New Jersey (D.N.J.) that, on March 24, 2016, she had been temporarily suspended from the practice of law.

¹ According to the complaint, the transcript incorrectly reflected that the meeting of creditors took place on May 27, 2016.

During the August 4, 2016 OAE interview, respondent falsely denied that she had served as P.S.'s attorney at the meeting of creditors. Her letter of the same date stated:

It was my testimony to you that neither I nor [P.S.] expressed at the hearing that I was acting as an attorney, but in fact it was stated several times at the repeated questioning of the Trustee, that I was strictly there as a friend for moral support because this individual experiences anxiety and was terrified of going to the hearing alone.

[C¶41;Ex.9.]²

The transcript of the debtor's bankruptcy hearing listed respondent as the attorney for the debtor. In addition, when the bankruptcy trustee inquired whether anyone was present on behalf of P.S., respondent replied "Yes. My name is Laura Rys. I am here for a limited appearance only for today." The trustee then asked respondent, "Okay. So you've not been retained beyond today's appearance?" Respondent replied that that was correct, gave the trustee her business card, and, on the record, provided her New York office address.

The complaint charged respondent with violations of RPC 3.3(a)(5) for failing to disclose to the D.N.J., that she had been suspended by the Court, knowing that the omission was reasonably certain to mislead the tribunal; RPC

² "C" refers to the November 7, 2018 amended ethics complaint.

5.5(a)(1) for practicing law in the bankruptcy court, knowing that she was ineligible to do so; and RPC 8.1(a) and RPC 8.4(c) for informing the OAE that she was not acting as an attorney when she appeared at the meeting of creditors.

As previously mentioned, the Court temporarily suspended respondent, effective April 25, 2016. The Order instructed respondent to comply with the requirements of R. 1:20-20. Respondent failed to file an affidavit of compliance, in accordance with that Rule. By letter dated August 3, 2016, the OAE reminded respondent of her obligation to file the R. 1:20-20 affidavit by August 17, 2016. As of the date of the complaint, November 7, 2018, respondent had neither replied to the letter nor filed the required affidavit.

According to the complaint, respondent willfully violated the Court's Order and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing current clients with their files. The complaint charged respondent with having violated RPC 8.1(b) and RPC 8.4(d).

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).

Respondent violated the recordkeeping rules by admittedly failing to maintain trust and business accounts in New Jersey, from December 23, 2015 to February 17, 2016, a violation of RPC 1.15(d). She also violated RPC 5.5(a)(1) by representing clients while ineligible in both state and federal court. In the bankruptcy matter, she failed to inform the clerk that she had been temporarily suspended, a violation of RPC 3.3(a)(5). Respondent also made misrepresentations to the OAE when she denied appearing in her clients' behalf in both the child support and bankruptcy matters, and asserted that she was there merely for their moral support. The records in both cases prove otherwise. She, therefore, violated RPC 8.1(a) and RPC 8.4(c). Finally, respondent failed to file the R. 1:20-20 affidavit of compliance, thereby violating RPC 8.1(b) and RPC 8.4(d).

The only issue left for our determination is the proper quantum of discipline to impose.

Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g. In re Fell, 219 N.J. 425 (2014) (reprimand for attorney who was ineligible for five months, but represented a matrimonial client while aware of his ineligibility; an aggravating factor was the attorney's prior reprimand; mitigating factors

included the attorney's ready admission of his conduct and the service he provided to his community); In re Moskowitz, 215 N.J. 636 (2013) (reprimand for attorney who was ineligible for more than seven months, but practiced law knowing that he was ineligible to do so); In re D'Arienzo, 217 N.J. 151 (2014) (censure imposed where the attorney's failure to ensure that payment was sent to the Fund was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included a 2013 reprimand, also for practicing while ineligible); and In re Macchiaverna, 214 N.J. 517 (2013) (censure for attorney who knowingly practiced law while ineligible and committed recordkeeping violations; aggravating factors included the attorney's prior reprimand for recordkeeping violations that led to the negligent misappropriation of client funds and his failure to appear on the return date of the Court's order to show cause).

A misrepresentation to a tribunal, whether affirmative or by silence, results in a broad range of discipline. See, e.g., In the Matter of Jean S. Lidon, DRB 11-254 (October 27, 2011) (admonition imposed on attorney who failed to disclose to the court and to the adversary in her own matrimonial matter that she had redacted a letter produced during discovery; the attorney had an unblemished disciplinary history and lacked venality in her actions); In re Manns, 171 N.J. 145 (2002) (reprimand for attorney who misled the court, in a

certification in support of a motion to reinstate a complaint, as to the date the attorney learned that the complaint had been dismissed, as well as for lack of diligence, failure to expedite litigation, and failure to communicate with the client; although the attorney had received a prior reprimand, his conduct in both matters had occurred during the same time frame and the misconduct in the second matter may have resulted from the attorney's poor office procedures); In re Monahan, 201 N.J. 2 (2010) (censure for attorney who made misrepresentations in two certifications submitted to a federal court in support of a motion to extend the time within which an appeal could be filed; the attorney also practiced while ineligible; attorney had practiced law without incident for more than twenty years); In re Trustan, 202 N.J. 4 (2010) (three-month suspension imposed on attorney who, among other things, submitted to the court a client's case information statement, which falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to the arbitrator; the attorney's motive was to obtain a personal injury settlement; prior private reprimand); and In re Marshall, 165 N.J. 27 (2000) (one-year suspension for attorney who deceived his adversary and the court in a litigated matter by failing to reveal a

material fact during the litigation, serving false answers to interrogatories, and permitting his client to produce misleading documents to his adversary, all the while maintaining his silence; the attorney backdated a stock transfer document and put an incorrect date in his notarization of the transfer agreement, knowing the timing of the transfer could have a material effect on the case).

A reprimand or censure is typically imposed for a misrepresentation to disciplinary authorities, as long as the lie is not compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); and In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who had misrepresented to an individual lender of his client and the OAE that funds belonging to the lender and his co-lenders, which had been deposited into the attorney's trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties, and who also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of

time, the absence of a disciplinary history in the attorney's lengthy career, and his public service and charitable activities).

An admonition is the usual form of discipline for recordkeeping violations, as long as no negligent misappropriation has occurred. See, e.g., In the Matter of Charles D. Petrone, DRB 13-175 (October 23, 2013) (the attorney failed to maintain a trust account, used a joint personal checking account that he maintained with his wife as his business account; failed to maintain business receipts and disbursements journals; and deposited legal fees in his attorney business account; violations of RPC 1.15(d) and R. 1:21-6).

Finally, as to the failure to file the required R. 1:20-20(b)(15) affidavit, the threshold measure of discipline is a reprimand. In re Girdler, 179 N.J. 227 (2004); In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. See, e.g., In re Kinnard, 220 N.J. 488 (2015) (censure for attorney who failed to file the affidavit after a temporary suspension for his failure to pay disciplinary costs; the attorney also had ignored the OAE's request that he file the affidavit); In re Palfy, 221 N.J. 208 (2015) (three-month suspension for attorney who exhibited a pattern of failure to cooperate with disciplinary and fee arbitration officials;

he was twice temporarily suspended for non-compliance with five separate fee arbitration matters and was temporarily suspended for failure to cooperate with an OAE investigation; we determined that the baseline for attorneys who failed to file R. 1:20-20 affidavits, defaulted, and had only temporary suspensions on their record was a censure; but enhanced the discipline because of the attorney's "pattern of obstinacy toward ethics and fee authorities"); In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension for attorney who failed to file the affidavit of compliance after a temporary suspension in 2009 and after a three-month suspension in 2010; prior six-month suspension); and In re Rifai, 213 N.J. 594 (2013) (one-year suspension following two three-month suspensions in early 2011, attorney failed to file affidavit; ethics history also included two reprimands).

Because none of the above cases is squarely on point, we turn to the case of Monahan as a point of comparison. There, the attorney received a censure for practicing law while ineligible and making misrepresentations to the court. He filed false certifications with a federal court in support of a motion to extend the time to file an appeal. Monahan, however, presented numerous and compelling mitigating circumstances: he had a twenty-three-year unblemished ethics history; during certain periods, he was ill and worked from his home; he cooperated fully with the ethics investigation; he was contrite and remorseful;

he conceded that the terminology he used in his certifications to the court could have been misconstrued; his conduct was not for personal pecuniary gain, but for the benefit of his client; the harm caused by his conduct was the time and cost that the adverse party incurred in responding to his motion; and his conduct was an isolated incident. In the Matter of Thomas P. Monahan, DRB 09-039 (September 15, 2009) (slip op. 9-10).

By contrast, here, respondent has advanced no mitigating circumstances because she defaulted. "[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). Because of respondent's default, we determine to enhance the discipline for his multiple ethics violations, which include RPC 1.15(d), RPC 3.3(a)(5), RPC 5.5(a)(1), RPC 8.1(a) and (b), and RPC 8.4(c) and (d).

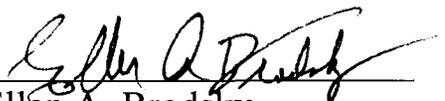
Respondent's failure to comply with her attorney registration and payment requirements since 2014, and failure to satisfy a fee arbitration award, make it apparent to us that she does not value her New Jersey law license. Under these circumstances, and based on the above precedent, we determine to impose a six-month suspension.

We also determine that, prior to respondent's reinstatement, she provide proof that she has completed six hours of continuing legal education (CLE) courses in attorney ethics, over and above those required for CLE compliance.

Member Gallipoli 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 Laura M. Rys
Docket No. DRB 19-026

Decided: August 2, 2019

Disposition: Six-Month Suspension

| <i>Members</i> | Six-Month Suspension | Recused | Did Not Participate |
|----------------|-------------------------|---------|---------------------|
| Frost | X | | |
| Clark | X | | |
| Boyer | X | | |
| Gallipoli | | | X |
| Hoberman | X | | |
| Joseph | X | | |
| Rivera | X | | |
| Singer | X | | |
| Zmirich | X | | |
| Total: | 8 | 0 | 1 |


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Chief Counsel