

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-039  
District Docket No. IV-2017-0048E

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In the Matter of :  
Stephanie Julia Brown :  
An Attorney At Law :  
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Decision

Decided: September 5, 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 IV Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.2(a) (failure to abide by the client's decisions concerning the scope of the representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to adequately communicate with the client and to reply to reasonable requests for information), RPC 1.5(b) (failure to set forth in writing the rate or basis of the legal fee), RPC 1.16(d) (failure to return the

client file upon termination of the representation), 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 three-month suspension.

Respondent was admitted to the New Jersey bar in 2006 and the Pennsylvania bar in 2004. She has no prior discipline. Effective April 12, 2019, respondent was temporarily suspended for failing to comply with a fee arbitration determination. In re Brown, 237 N.J. 249 (2019). Respondent remains suspended to date.

Service of process was proper in this matter. On September 20, 2018, the DEC sent a copy of the complaint to respondent by certified and regular mail to her Williamstown, New Jersey office address listed in the attorney registration records. This is the same address that respondent provided to the DEC secretary, as her correct office address, in her December 5, 2017 reply to the grievance.

Neither the certified mail receipt card nor the regular mail sent to respondent's office address were returned. A United States Postal Service (USPS) tracking search indicated that, on September 20, 2018, a notice was left regarding the certified mail.

On September 20, 2018, the DEC also sent a copy of the complaint by both certified and regular mail to respondent at the home address listed on the grievance form. Both the certified and regular mail envelopes were returned to the DEC. On the regular mail envelope, the USPS had affixed a notice indicating that the forwarding time had expired, and noted that the new address was the Williamstown office address listed above.

On October 16, 2018, the DEC sent a letter to respondent at her office address, by regular mail, informing her that, if she did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for imposition of discipline, and the complaint would be amended to include a charge of a violation of RPC 8.1(b).

As of December 20, 2018, respondent had not filed an answer, and the time within which respondent may answer the complaint expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

On October 13, 2016, Thomas McLaughlin retained respondent to file a motion to modify child custody and child support obligations, and to obtain the reimbursement of certain of the children's day care and sports activity expenses.

Thereafter, McLaughlin frequently sought information about the status of his matter. On more than one occasion, respondent told him that the motion would be filed in two weeks. In March 2017, five months after her retention, respondent told McLaughlin that she had filed the motion. However, when McLaughlin called the court, he learned that respondent had not filed the motion. Respondent then told McLaughlin that she would "take care of it."

The motion that respondent ultimately filed was contrary to McLaughlin's directions. Although he had sought only modifications to child custody and support obligations, respondent's motion sought sole custody and complete termination of his support obligations. Respondent failed to show the pleadings to McLaughlin prior to filing them. Moreover, respondent, not McLaughlin, had executed the certification in support of the motion, which addressed the issue of changed circumstances, as noted in R. 5:5-4. In addition, respondent failed to obtain McLaughlin's financial information in support of the motion.

McLaughlin's former wife filed a cross-motion seeking enforcement of litigant's rights and attorney's fees, returnable on June 2, 2017. Respondent instructed McLaughlin not to appear on the return date, because the hearing was "for attorneys only," although the court had issued no such directive.

Ultimately, the court entered an order deeming McLaughlin's motion deficient, finding that it was improper for respondent, rather than her client, to have signed the certification; and requiring McLaughlin to provide the required financial information by July 21, 2017. In the absence of that information, the parties were required to return to court on July 28, 2017. Respondent failed to give McLaughlin a copy of that order, and simply told him that the outcome was "not good." She claimed that she would file a motion to address "the points that we lost in this motion."

On July 1, 2017, respondent told McLaughlin that she could no longer represent him. Because she never told him about his obligation to provide the financial information, McLaughlin neither provided the necessary documents nor appeared at the July 28, 2017 hearing. Respondent, too, failed to appear and as a result, McLaughlin's relief was not granted. At the hearing, the judge entered an order requiring McLaughlin to pay \$3,200 in attorney's fees to his former wife, to pay additional attorney's fees for his former wife's attorney to file a qualified domestic relations order (QDRO) to seize funds from his 401(k) account, and to pay a \$1,000 sanction.

Further, McLaughlin requested his file from respondent, a portion of which he had received on August 22, 2017. Another attorney told McLaughlin

that respondent had provided only one-half of his file. After the grievance was filed, respondent returned the entire file to McLaughlin. In her reply to the grievance, respondent stated that she had, by then, returned "his pertinent paperwork."

The complaint charged respondent with gross neglect, a pattern of neglect, and lack of diligence for her five-month delay in filing the motion, her failure to obtain required financial information from McLaughlin, and her failure to obtain a certification in support of changed circumstances, pursuant to R. 5:5-4.

The complaint also alleged that, because respondent failed to provide McLaughlin with the pleadings filed in his case, he was unaware that the motion that respondent filed was contrary to the relief he told respondent he was seeking, at the inception of the representation. According to the complaint, respondent violated RPC 1.2(a) in this regard.

In addition, the complaint charged respondent with failure to communicate with McLaughlin by failing to provide him with copies of pleadings; failing to explain those documents to him; and failing to inform him of the court order requiring him to produce financial information and the need to appear at the July 28, 2017 hearing if he failed to produce the documents.

Although respondent provided McLaughlin with a written fee agreement requiring a \$5,000 retainer, it is not part of the record. The complaint alleged that respondent violated RPC 1.5(b) because the agreement did not specify an hourly rate. At some point, respondent exhausted the retainer. In her December 5, 2017 reply to the grievance, respondent stated that she had returned \$4,300 of the retainer to McLaughlin.

For the delay in returning the file to McLaughlin, the complaint charged that respondent failed to protect her client's interests upon termination of the representation, in violation of RPC 1.16(d). Respondent was not charged with improper termination or failure to return the unearned portion of her fee.

The complaint also charged respondent with making misrepresentations to her client. First, she told McLaughlin that she would file a motion in his behalf within two weeks of the inception of the representation, but did not do so for five months. Second, she told McLaughlin that a court hearing was "for attorneys only," when she knew that he was entitled to attend the hearing. Third, she failed to tell McLaughlin about pending court dates, which resulted in the imposition of attorney's fees and sanctions against him.

Finally, the complaint alleged that, because respondent failed to provide the pleadings to McLaughlin before filing them, respondent failed to seek the

relief for which he had retained her. According to the complaint, by "abandoning" McLaughlin "in the middle of proceedings about which he knew nothing," respondent prejudiced the administration of justice.

Following a review of the record, we find that the facts recited in the complaint support most of 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). Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

McLaughlin retained respondent to file a motion seeking modifications to his child custody arrangement and child support obligations, and for the reimbursement of expenses related to the children. For the first five months of the representation, McLaughlin sought from respondent the status of his case, after which she finally filed a motion and appeared on the June 2, 2017 return date. Respondent's motion failed to include her client's certification or financial information in support of his claim. Afterward, she failed to tell McLaughlin that the court had ordered him to produce the financial documents by July 21, 2017, or to appear at a hearing scheduled for July 28, 2017 if he failed to do so.



On July 1, 2017, respondent terminated her representation of McLaughlin without explanation, telling him only that she could no longer represent him. Because respondent had kept McLaughlin in the dark about his case, he was unaware of the July 28, 2017 hearing, and failed to appear. Respondent also failed to appear, prompting the judge to assess McLaughlin attorney fees (\$3,200), a sanction (\$1,000), and legal fees for a QDRO. Undoubtedly, respondent's misconduct constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

In respect of the charge that respondent engaged in a pattern of neglect, three instances of neglect are necessary to form a pattern. See In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005), In re Rohan, 184 N.J. 287 (2005). Here, because only one instance is present, we dismiss the RPC 1.1(b) charge.

Respondent also failed to abide by her client's decisions regarding the objectives of the representation. McLaughlin sought modifications to custody and child support obligations that were in place when he retained respondent. Inexplicably, respondent filed a motion seeking sole custody of the children for McLaughlin and the termination of his child support obligations. Respondent's actions were contrary to McLaughlin's wishes and violated RPC 1.2(a).

Respondent failed to communicate to McLaughlin all of the important events in the case. In reply to McLaughlin's numerous attempts to obtain information about the status of his case, respondent told him that she would file a motion in two weeks. Respondent finally filed McLaughlin's motion, returnable June 2, 2017. She, however, did not give McLaughlin a copy of the pleadings or explain those documents to him. After the hearing, respondent failed to explain the court's findings, including the need for McLaughlin's financial information. She also failed to tell him that, if he did not furnish the financial information, he was required to appear at a July 28, 2017 hearing. When respondent abruptly terminated the representation, on July 1, 2017, she left McLaughlin without any sense of what had transpired, or what lay ahead. Respondent's complete failure to communicate with McLaughlin about the events in his case constituted a violation of RPC 1.4(b).

In respect of the charge that respondent failed to set forth, in writing, the rate or basis of her fee, the record is unclear. We know that respondent provided McLaughlin with a written agreement calling for a \$5,000 retainer, and that respondent exhausted that sum. The complaint also stated that respondent failed to set forth her hourly rate in that agreement. Yet, the complaint does not state that the parties agreed that respondent would be compensated on an hourly basis.

Because the complaint is silent about the nature of the agreement, and the agreement is not a part of the record, we cannot find that respondent's failure to include her hourly rate constituted an ethics infraction. For lack of clear and convincing evidence of a violation, we dismiss the RPC 1.5(b) charge.

Respondent turned over about half of McLaughlin's file in August 2017, after she terminated the representation, and after the court already had entered its final order against McLaughlin. Six months later, in December 2017, respondent informed the DEC that she had returned the file. For the lengthy delay in doing so, respondent violated RPC 1.16(d).

Respondent also lied to McLaughlin by telling him that she had filed the motion; by telling him not to appear at the June 2, 2017 hearing, because it was "for attorneys only," when she knew that he was entitled to attend the hearing; and by failing to tell him about the outcome of the June 2, 2017 court date. In so doing, respondent violated RPC 8.4(c).

Finally, in respect of the charge that respondent engaged in conduct prejudicial to the administration of justice, respondent inexplicably filed a motion that far outstripped the relief that McLaughlin sought. Consequently, respondent failed to seek the modifications to child support and custody for which he had retained her. Worse, due to respondent's misconduct, neither she

nor McLaughlin appeared for the final, July 28, 2017 hearing. The court had little choice but to deny the relief respondent sought, award attorney fees to McLaughlin's former wife, and impose a sanction against him. Respondent's actions in this regard prejudiced the court's ability to administer justice, in violation of RPC 8.4(d).

In summary, in a single client matter, respondent is guilty of gross neglect, failure to abide by the client's decisions regarding the scope of the representation, lack of diligence, failure to communicate with the client, failure to return the client file upon termination of the representation, misrepresentations to the client, and conduct prejudicial to the administration of justice.

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may 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); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations

of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c)); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not 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) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c)); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he

did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Conduct prejudicial to the administration of justice comes in a variety of forms, but the discipline imposed for that misconduct typically results in at least a reprimand. See, e.g., In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)) and In re Gellene, 203 N.J. 443 (2010) (attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; two prior private reprimands and an admonition).

Attorneys found guilty of failing to turn over the client file upon termination of the representation have received admonitions, even when found alongside other less serious ethics infractions. See, e.g., In the Matter of Gary A. Kraemer, DRB 14-085 (June 24, 2014) (several months after final judgment was entered against his client, the attorney failed to turn over the client file to appellate counsel, a violation of RPC 1.16(d); lack of diligence and failure to communicate with the client also found) and In the Matter of William A. Thompson, III, DRB 07-118 (July 24, 2007) (as the collection attorney for an entity, the attorney failed to turn over its files to subsequent counsel in an effort to protect his legal fees, despite the new attorney's repeated assurances that fees would be protected, a violation of RPC 1.16(d)).

Finally, without more, an attorney's failure to abide by the client's decisions regarding the scope of the representation has resulted in an admonition. See, e.g., In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney caused his client's complaint to be withdrawn, based not on a request from the client, but on a statement from prior counsel that the client no longer wished to pursue the claim, which constituted a failure to abide by the client's decisions concerning the scope of the representation (RPC 1.2(a)); failure to set forth in writing the basis or rate of the fee, and failure to

communicate with the client also found) and In the Matter of John S. Giava, DRB 01-455 (March 15, 2002) (the attorney, retained to obtain a wage execution against a defaulting real estate purchaser, instead entered into a settlement agreement with the buyer without the clients' consent, in violation of RPC 1.2(a)).

This case is similar to Falkenstein, wherein the attorney, like respondent, lied to the client in order to conceal a failure to abide by the client's wishes. Respondent sought the termination of child support and sole custody of the couple's children – relief that McLaughlin never authorized. Similar other violations are present here and in Falkenstein, including gross neglect, lack of diligence, and failure to communicate with the client.

In aggravation, respondent's misconduct caused harm to the client. McLaughlin lost his motion, had to pay his former wife's legal fees, and received a \$1,000 court sanction.

In addition, we considered 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).

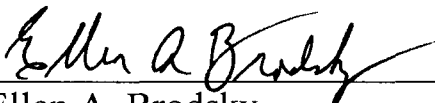


Although the baseline form of discipline for misrepresentations and conduct prejudicial to the administration of justice is a reprimand, given the harm to the client and default nature of this matter, we determine that a three-month suspension is appropriate.

Chair Clark and Members Boyer and Joseph voted for a censure.

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  
Bruce W. Clark, Chair

By:   
Ellen A. Brodsky  
Chief Counsel


SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Stephanie Julia Brown  
Docket No. DRB 19-039

Decided: September 5, 2019

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Censure	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph		X		
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	3	0	0

  
Ellen A. Brodsky  
Chief Counsel