

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-132
District Docket No. VA-2016-0031E

In the Matter of
Eugenia Ruiz-Uribe
An Attorney at Law

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Decision

Decided: November 27, 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 VA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.15(b) (failure to promptly disburse funds to a client); RPC 1.16(d) (upon termination of the representation, failure to take steps reasonably practicable to protect a

client's interests); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey bar in 2007. During the relevant time frame, she maintained a law practice in Tonawanda, New York. She has no disciplinary history.

Service of process was proper in this matter. On January 16, 2018, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's Buffalo, New York primary address of record. The DEC received a certified mail receipt bearing the signature of "Gloria Arango." The regular mail was not returned.

Almost five months later, on May 8, 2018, the DEC sent a letter, by certified and regular mail, to the same Buffalo, New York address, informing respondent 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 United States Postal Service, the certified mail was confirmed as delivered on May 12, 2018; the regular mail was not returned.

On August 23, 2018, Isabel McGinty, Office of Attorney Ethics Statewide Ethics Coordinator, sent a copy of the formal ethics complaint to respondent, via her e-mail address of record. Despite that additional service, respondent failed to file an answer to the complaint. As of April 1, 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 DEC certified the record to us as a default.

We now turn to the allegations of the complaint.

In December 2013, the grievants, J.L., a citizen of Guatemala, and his wife, A.L., a citizen of the United States, retained respondent to represent them in immigration removal proceedings that had commenced against J.L. Respondent knew that J.L. wished to obtain permanent resident status, so that he could remain in the United States with his wife and two children.

In a January 15, 2014 letter to J.L. and A.L., respondent provided an itemized list of the legal services she would perform for a fee of \$5,050, and associated costs of \$1,408. The services included preparation and filing of an I-130 Petition for Alien Relative; preparation and processing of an immigrant

visa; preparation and submission of an I-601A waiver; and representation of J.L. and A.L. in the removal proceedings until the case was administratively closed.

Respondent informed J.L. and A.L. that they could pay her legal fee in monthly installments of \$800. Accordingly, between 2014 and the end of 2015, they paid her \$5,250. Respondent estimated that her work on the matter would take between fourteen and twenty months, depending on J.L. and A.L.'s cooperation, and the timing of the government's actions.

On November 5, 2014, respondent obtained government approval of an I-130 Petition for Alien Relative. Thereafter, despite the cooperation of J.L. and A.L., respondent failed to complete any of the additional legal services she had been retained to provide, including the submission of an I-601A waiver, which, if approved, would have exempted J.L. from a statutory provision that would bar him from entry into the United States for ten years. Additionally, for much of 2015, although J.L. and A.L. continued to make monthly payments toward her fee, they had difficulty reaching respondent. Specifically, despite telephone calls, texts, and e-mails from J.L. and A.L., respondent did not reply to their inquiries regarding the status of J.L.'s I-601A waiver application.

By letter dated February 1, 2016, J.L. and A.L. terminated the representation; asked respondent to return \$3,500 and provide an accounting of

the work she had completed against the fees paid to her; and asked respondent to provide their file to them. Because respondent did not reply to the termination letter, J.L. and A.L. retained new counsel to obtain their file from respondent. Respondent did not provide the file to their new counsel until three months after it had been requested, and after J.L. and A.L. had paid \$1,100 in fees to the new lawyer simply to obtain their own file.

On January 13, 2017, the assigned DEC investigator provided a copy of the ethics grievance to respondent and requested a reply within ten days. In a January 26, 2017 e-mail to the investigator, respondent expressly acknowledged receipt of the grievance and promised to reply but, despite numerous subsequent requests from the investigator, failed to submit a reply to the grievance.

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).

In December 2013, J.L. and A.L. retained respondent to represent them in immigration removal proceedings against J.L. Although respondent received her entire legal fee and knew that J.L. was facing imminent deportation and separation from his wife and children, respondent performed only the first step

of the legal services she was obligated to complete. For much of 2015, despite telephone calls, texts, and e-mails from J.L. and A.L., respondent ceased to communicate with them regarding their matter. Respondent, thus, violated both RPC 1.3 and RPC 1.4(b).

On February 1, 2016, J.L. and A.L. terminated the representation, requested a refund of \$3,500 and an accounting of respondent's legal services, and requested their file. Respondent did not reply to the termination letter, forcing J.L. and A.L. to obtain new counsel to pursue their file. Respondent then failed to provide their file to their new counsel until three months after it had been requested, and after J.L. and A.L. had been required to pay \$1,100 in legal fees to obtain it. Respondent, thus, violated both RPC 1.15(b)¹ and RPC 1.16(d).

In January 2017, respondent acknowledged receipt of the ethics grievance underlying this matter, but, despite numerous subsequent requests from the DEC investigator, failed to submit a reply to the grievance or to file an answer to the formal ethics complaint. Respondent, thus, violated RPC 8.1(b).

¹ Although the failure to return the unearned portion of a fee is a violation of RPC 1.16(d), respondent's conduct also constitutes a failure to promptly disburse funds to a client, a violation of RPC 1.15(b).

In sum, respondent violated RPC 1.3, RPC 1.4(b), RPC 1.15(b), RPC 1.16(d), and RPC 8.1(b). The only remaining issue is the quantum of discipline to impose for respondent's misconduct.

Attorneys with no disciplinary history who violate RPC 1.3, RPC 1.4(b), and RPC 1.16(d), even when accompanied by other, non-serious ethics infractions, receive admonitions. See e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint to be administratively dismissed, 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, 192 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).

Ordinarily, an admonition also is the appropriate sanction for an attorney's failure to promptly return the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

Admonitions typically are 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 district ethics committee 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)).

Based on disciplinary precedent, the totality of respondent's misconduct warrants at least a reprimand. To craft the appropriate discipline, however, we also consider aggravating and mitigating factors.

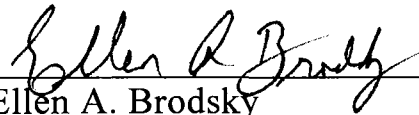
In aggravation, respondent's misconduct caused both financial and actual harm to her clients, whom she deserted, without explanation, as one of them faced deportation and a potential ten-year bar from admission into the United States. Her clients were forced to expend \$1,100 just to obtain their own file from respondent, who had inexplicably ceased all communication. The default status of this matter must also be considered as an aggravating factor. "A respondent's default or failure to cooperate with the investigative authorities acts 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) (citations omitted).

The only mitigation for us to consider is respondent's unblemished disciplinary record since her 2007 admission to the bar. In light of the default status of this case, and the lack of mitigation sufficiently compelling to neutralize the aggravating factors, we determine to enhance the sanction in this case to a censure.

Member Petrou voted to impose a three-month suspension, emphasizing the sensitive subject matter of the representation and the potential dire impact of respondent's misconduct on her clients. 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

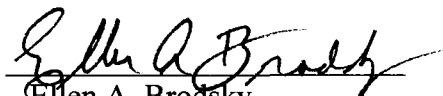
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eugenia Ruiz-Uribe
Docket No. DRB 19-132

Decided: November 27, 2019

Disposition: Censure

<i>Members</i>	Censure	Three-Month Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer	X			
Hoberman	X			
Joseph				X
Petrou		X		
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1


Ellen A. Brodsky
Chief Counsel