

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-137
District Docket No. IV-2018-0018E

In the Matter of
Susan A. Lowden
An Attorney at Law

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Decision

Decided: December 6, 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 1.3 (lack of diligence); RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information); RPC 1.4(c) (failure to explain a matter to the extent

reasonably necessary to permit the client to make informed decisions about the representation); RPC 1.5(b) (failure to set forth in writing the rate or basis of the fee); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We are unable to reach a consensus on the proper quantum of discipline. Four members vote for a six-month suspension. The remaining four members vote for a three-month suspension.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1991. At the relevant times, she maintained an office for the practice of law in Haddonfield, New Jersey.

On September 5, 2014, respondent received a reprimand for gross neglect, lack of diligence, failure to communicate with the client, failure to prepare a written fee agreement, failure to cooperate with ethics authorities, and repeatedly misrepresenting the status of the case to the client. In re Lowden, 219 N.J. 129 (2014).

On September 21, 2016, respondent received a censure for gross neglect, lack of diligence, failure to communicate with the client, and for misrepresenting to the client that she had sent a complaint to a court for filing. In re Lowden, 226 N.J. 586 (2016).

Effective April 12, 2019, respondent was temporarily suspended for failure to comply with a determination of the District IV Fee Arbitration Committee. She remains suspended to date.

Service of process was proper. On January 16, 2019, the DEC sent a copy of the formal ethics complaint, by regular and certified mail, to respondent's office address of record. The DEC received a certified mail receipt bearing a delivery date of January 17, 2018 [sic], and an illegible signature. The regular mail was not returned.

On March 13, 2019, the DEC sent a letter to respondent, by regular mail, at the office address, 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). The regular mail was not returned.

As of March 29, 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 this matter to us as a default.

We now turn to the allegations of the complaint.

In 2013, Scott Douglas Spruill retained respondent in connection with his divorce, which included issues of custody, parenting time, support, equitable distribution, and attorneys' fees and costs. Spruill's matrimonial action was complex, due to the parties' long-term marriage, three children, and marital income, which was derived from one business that had been sold prior to the divorce, and another business that filed for bankruptcy during the divorce proceedings.

Respondent failed to provide Spruill with a written agreement setting forth the rate or basis of her fee, and failed to furnish him with billing invoices at regular intervals, both of which R. 5:3-5 requires in civil family actions. The complaint alleged that respondent's failure to provide those documents to Spruill violated RPC 1.5(b).

Further, respondent failed to "regularly or reliably" provide Spruill with copies of correspondence, pleadings, motions, or other information in the case. She also failed to provide Spruill with copies of discovery requests from his wife's counsel, or to inform him about an associated January 19, 2016 discovery order.

In addition, respondent failed to provide discovery to adverse counsel, despite three court orders requiring its production, and failed to serve discovery

requests on her adversary within the time initially permitted in the case management order, or as extended in a January 19, 2016 order.

From April through August 2016, respondent exchanged text messages with Spruill in which she falsely stated that she was “waiting for a court date.” Those communications were intended to mislead Spruill that she had filed a motion for child support, but that the court had not yet provided her with a return date for the motion. The complaint alleged that a text chain illustrated “a continued pattern of respondent putting the client off, delaying the process of furnishing any substantive information, as well as trying to cover up misrepresentations made by Respondent, that she had filed a motion on [Sпруill’s] behalf that had never been filed.”

For eight months, respondent misrepresented to Spruill that his wife’s attorneys were not returning her calls, and that delays in the case were the result of awaiting an expert’s report. In fact, the parties were awaiting Spruill’s payment of the expert’s fees. Spruill, however, was unaware of that obligation, because respondent had failed to so inform him.

In the fall of 2016, respondent failed to inform Spruill about a motion to strike his pleadings, with prejudice; failed to provide him with a copy of the

motion; and failed to oppose the motion. Respondent also failed to provide Spruill with a January 27, 2017 order addressing his failure to provide discovery.

The complaint alleged that respondent violated RPC 8.4(c) by misrepresenting to Spruill that she had filed a motion for child support on his behalf and that his wife's counsel was not returning her calls, and by sending text messages to him that were intended to conceal her misrepresentations.

Finally, the complaint charged that respondent failed to cooperate with disciplinary authorities by not providing the DEC with a written reply to the grievance, despite repeated requests for that information, and by failing to file an answer to the complaint, in violation of RPC 8.1(b).¹

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 2013, respondent represented Spruill in his divorce matter. Although a written fee agreement and periodic billing are required in civil family matters,

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the complaint was amended to include the additional RPC 8.1(b) charge.

pursuant to R. 5:3-5, respondent neither set forth in writing the rate or basis of her fee nor billed respondent periodically. She, thus, violated RPC 1.5(b).

Thereafter, respondent failed to provide discovery to the wife's attorney, despite three court orders requiring its production; failed to file a motion for child support on Spruill's behalf, despite claims that she had done so; failed to pay an expert, which resulted in delay; failed to serve discovery requests on her adversary, despite an extension of time within which to do so; and failed to oppose a motion to strike Spruill's pleadings, with prejudice. Respondent's failure to protect her client's claim constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3.

Moreover, respondent's communications with Spruill were woefully inadequate. She failed to provide him with invoices for legal services at regular intervals; copies of correspondence, pleadings, and a motion to strike his pleadings with prejudice; discovery requests; and January 19, 2016 and January 27, 2017 orders resulting from her failure to provide discovery. She did not inform him of the need to pay for the expert to support his case. Respondent's lack of communication left Spruill in the dark about his case and hampered his ability to make informed decisions about the representation. She, thus, violated RPC 1.4(b) and (c).

Respondent failed to reply to the ethics grievance, despite the investigator's repeated requests for that information, and failed to file an answer to the formal ethics complaint. She, thus, committed multiple violations of RPC 8.1(b).

Finally, respondent misrepresented the status of the case to Spruill when she stated that she had filed a motion for child support on his behalf; misled him in text messages intended to conceal her earlier misrepresentations; and made false statements, including that his wife's counsel was not returning her calls, to obscure her own inaction in the case. She, thus, committed multiple violations of RPC 8.4(c).

In sum, in one client matter, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), RPC 1.5(b), RPC 8.1(b), and RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

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 involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee when he drafted a will, living will, and power of attorney, and processed a disability claim for a new client, a violation of RPC 1.5(b); lack of diligence, failure to communicate with the client, practicing law while administratively ineligible, and failure to cooperate with an ethics investigation also found; no prior discipline in forty-year legal career) and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (attorney failed to set forth in writing the basis or rate of the fee, a violation of RPC 1.5(b); failure to communicate with the client, and failure to abide by the

client's decisions concerning the scope of the representation also found; no prior discipline).

Like the attorneys in Dwyer, Ruffolo, and Falkenstein, respondent repeatedly misrepresented the status of the case to Spruill, in a desperate effort to conceal her own gross neglect. A reprimand, thus, is the baseline sanction for respondent's misconduct.

In aggravation, however, the default status of this matter must also be considered. "[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). In light of respondent's default, alone, the enhanced sanction of a censure is warranted.

In crafting the appropriate quantum of discipline, however, we must also weigh, in aggravation, respondent's failure to learn from her past mistakes. The Supreme Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Specifically, in 2014, the Court reprimanded respondent for misconduct identical to the instant matter. Then, in September 2016, the Court censured her for gross neglect, lack of diligence, failure to communicate, and misrepresentations to the client.

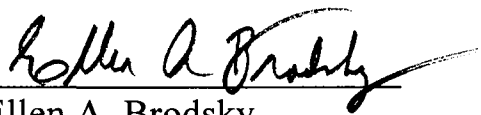
Through this third disciplinary matter, respondent has established an alarming penchant for grossly neglecting clients' matters, and then lying to the client in an attempt to conceal her inaction. She has demonstrated an inability to learn from her past mistakes, and a pattern of inflicting harm on her clients. Accordingly, further enhancement of the sanction, from a censure to a term of suspension, is required to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Petrou, Rivera, and Zmirich voted to impose a six-month suspension. Chair Clark and Members Boyer, Hoberman, and Singer voted for a three-month suspension.

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 Susan A. Lowden
Docket No. DRB 19-137

Decided: December 6, 2019

Disposition: Other

<i>Members</i>	Six-Month Suspension	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:	4	4	0	1


Ellen A. Brodsky
Chief Counsel