

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-239
District Docket No. IIIB-2018-0038E

In the Matter of
Frances Ann Hartman
An Attorney At Law

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Decision

Decided: January 29, 2020

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 IIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).¹

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

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

Respondent was admitted to the New Jersey and Pennsylvania bars in 1984 and to the Kansas bar in 1987. Presently, she maintains an office for the practice of law in Moorestown, New Jersey.

In 2014, respondent received an admonition for her violation of RPC 1.3 and RPC 1.4(b) and (c). In the Matter of Frances Ann Hartman, DRB 14-138 (July 22, 2014). In that matter, she failed to act with diligence after her client's complaint was dismissed, and failed to return the client's repeated telephone calls and e-mails for almost a year. Further, she failed to explain to the client problematic issues with the client's claims, so that the client could make an informed decision regarding whether to proceed with the matter. In imposing an admonition, we considered that, prior to that complaint, respondent had a spotless record in thirty-three years as a member of the bar.

Service of process was proper. On March 20, 2019, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address. The certified mail receipt was returned, reflecting a delivery date of March 25, 2019, and bearing the signature of "Joanne Beasley." The regular mail was not returned.

On April 18, 2019, the DEC sent a letter, by certified and regular mail, to respondent's 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 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 certified mail receipt was returned, reflecting a delivery date of April 22, 2019, and bearing an illegible signature. The regular mail was not returned.

As of May 14, 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.

On August 21, 2017, the grievant, Maryann Muncey, retained respondent to assist her in recouping pension monies from Muncey's former husband. Muncey alleged that he had failed to disclose these funds in connection with their divorce proceedings. During their initial meeting, Muncey provided pertinent documents to respondent, including correspondence and notes relating to the New Jersey State Division of Pension and Benefits, and a copy of Muncey's judgment for divorce.

Respondent told Muncey that she would charge a fee on an hourly basis to review her file, and, after respondent completed her review, they would discuss whether to proceed, on a contingent fee basis, with a legal malpractice claim against Muncey's divorce counsel. Muncey authorized respondent to proceed with the file review and, at the conclusion of their meeting, advanced a \$750 retainer. Respondent

neither set forth in writing the basis or rate for the legal fee nor provided Muncey with an engagement letter. However, respondent opened a file for Muncey's case.

From September through December 2017, Muncey placed several telephone calls to respondent, seeking status updates on her matter, but respondent failed to return her calls or to provide her any status updates.² In late December 2017, Muncey was able to reach respondent by telephone. During that conversation, respondent told Muncey that she had not yet investigated her matter, but would do so shortly. On April 19, 2018, Muncey sent respondent a letter, by certified mail and facsimile, requesting that respondent return her file. Respondent neither replied to this letter nor returned Muncey's file.

Meanwhile, in early January 2018, Muncey filed an ethics grievance, which referenced the fee that respondent had collected. On May 10, 2018, the DEC Secretary advised Muncey to contact the appropriate Fee Arbitration Committee. On July 13, 2018, after Muncey had filed for fee arbitration, she and respondent entered into a stipulation of settlement, whereby respondent returned the entire \$750 to Muncey.

On September 7, 2018, the DEC docketed a second ethics grievance filed by Muncey and sent respondent a letter notifying her of the investigation. On October

² The complaint does not allege that respondent violated RPC 1.4(b) in respect of this conduct.

11, 2018, the DEC provided respondent with a copy of the grievance and requested a written reply to the allegations. On November 7, 2018, the DEC sent a second letter to respondent, again requesting her reply, in light of respondent's failure to reply to the first letter.

In a November 19, 2018 reply, although respondent admitted meeting with Muncey regarding a post-judgment matrimonial matter, she denied that she possessed any of Muncey's documents. Respondent claimed that she no longer had the notes taken during her meeting with Muncey. According to respondent, Muncey had alleged third-party fraud in connection with her marital settlement agreement, but denied that Muncey had mentioned anything relating to her former husband's pension. Respondent asserted that she had advised Muncey that such fraud would be difficult to prove; informed Muncey that it would take time to determine whether there was an actionable case; asked Muncey to pay by the hour for respondent's initial review, with a hard cap of five hours of respondent's time (\$1,500); and told Muncey that, because any resulting litigation would be too expensive to handle on an hourly basis, if they proceeded, they would do so on a contingent basis.

Respondent acknowledged that Muncey had paid the \$750 retainer at the conclusion of their initial consultation, but asserted that she earned at least \$300 of it for that consultation. Respondent also recalled copying one of Muncey's documents, which she described as some sort of asset or title search, but represented

that she could no longer locate the document.³ Respondent admitted having maintained no time records regarding Muncey's matter and was able to produce only Muncey's initial interview form. Respondent recalled that, in May 2018, Muncey asked her to return the \$750 retainer, and that respondent returned those funds, without deducting the consultation fee. Respondent admitted not having performed any work on Muncey's file following their initial meeting.

On November 20, 2018, the DEC investigator sent respondent's reply to the ethics grievance to Muncey for review and comment. Thereafter, on November 28 and 29, 2018, the DEC interviewed Muncey and respondent, respectively. In a letter dated November 29, 2018, Muncey addressed respondent's reply to the grievance, alleging that there were many "untruths" in respondent's letter. Specifically, Muncey again asserted that she had informed respondent that her case involved a pension dispute with her former husband; that respondent had informed her that she charged no consultation fee, and that, after she had not heard from respondent for several months, she contacted the fee arbitration committee for assistance, because she believed that respondent was doing nothing on her case and had simply taken her money. In short, Muncey believed that respondent took her money and "called it a day," and was now being untruthful to the DEC. The DEC forwarded to respondent

³ The complaint does not allege that respondent violated RPC 1.16(d) in respect of this conduct.

Muncey's rebuttal, but respondent failed to provide any further information or documentation.

Based on the above facts, the formal ethics complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, and RPC 1.5(b). In connection with the DEC's April 18, 2019 letter, the charges were amended to include the RPC 8.1(b) allegation, due to respondent's failure to reply to the formal ethics complaint.

We find that the facts recited in the complaint clearly and convincingly 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 RPC 1.1(a) and RPC 1.3 by failing to perform any work on Muncey's matter following their initial consultation, from August 2017 through April 19, 2018, when Muncey terminated the representation.

Next, respondent violated RPC 1.5(b) by failing to communicate to Muncey, in writing, the basis or rate of her legal fee. Respondent had not previously represented Muncey, yet, she failed to provide Muncey with a written fee agreement during their initial meeting or within a reasonable thereafter.⁴

⁴ Moreover, respondent also violated R. 5:3-5, which requires a written fee agreement in all civil family matters. Because that Rule was not charged, we do not find a violation of R. 5:3-5.

Finally, respondent violated RPC 8.1(b) by failing to file an answer to the formal ethics complaint. In fact, respondent wholly failed to cooperate, despite the DEC's April 18, 2019 letter, which informed her that the failure to file an answer would result in an amendment to the complaint to include a charge of a violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.5(b), and RPC 8.1(b). The sole issue left for us to determine is the appropriate discipline for respondent's misconduct.

Conduct involving gross neglect and lack of diligence, even when accompanied by the failure to communicate with clients (a violation not charged in this matter), ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the harm to the clients, the attorney's disciplinary history, and the presence of aggravating or mitigating factors. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition; attorney who was not licensed to practice law in Washington, D.C. filed an employment discrimination case in the United States District Court for the District of Columbia and obtained local counsel to assist him in handling the matter; after the defendant filed a motion to dismiss the complaint, however, the attorney failed to provide local counsel with written opposition to the motion until after the return date, resulting in the granting of the motion as unopposed; violations of RPC

1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various filing deadlines and about the difficulty he was having meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, violations of RPC 1.4(b) and (c); we considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident); In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition; due to the attorney's failure to comply with discovery, his client's civil rights complaint was dismissed; the attorney's motion to vacate the default was denied and a subsequent appeal was dismissed based on his failure to timely prosecute it; the attorney neither informed the client of the dismissal of the appeal nor discussed with him his decision not to pursue it; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c); although the attorney had been admonished previously, we noted that his conduct predated the conduct in the prior matter, and that the client and his family had continued to use the attorney's legal services, despite his shortcomings in the civil rights matter); In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand); and In re Kurts, 206 N.J. 558 (2011) (attorney reprimanded for mishandling two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other,

he was retained to obtain a reduction in child support payments but, at some point, ceased working on the case and closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to memorialize the basis or rate of his fee; mental illness considered in mitigation; no prior discipline).

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).

Reprimands have been imposed on attorneys who, in addition to violating RPC 1.5(b), have defaulted, have a disciplinary history, or have committed other acts of misconduct. See, e.g., In re Yannon, 220 N.J. 581 (2015) (attorney failed to memorialize the basis or rate of his fee in two real estate transactions, a violation of RPC 1.5(b); discipline enhanced from an admonition based on the attorney's prior one-year suspension); In re Gazdzinski, 220 N.J. 218 (2015) (attorney failed to prepare a written fee agreement in a matrimonial matter; the attorney also failed to comply with the district ethics committee investigator's repeated requests for the file, a violation of RPC 8.1(b), and violated RPC 8.4(d) by entering into an agreement with the client to dismiss the ethics grievance against him, in exchange for a resolution of the fee arbitration between them); and In re Kardash, 210 N.J. 116 (2012) (in a default matter, the attorney failed to prepare a written fee agreement for a matrimonial client).

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a

reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

The baseline level of discipline for respondent's combined violations is a reprimand. However, to craft the appropriate discipline in this case, we also consider both mitigating and aggravating factors. In respect of mitigation, respondent returned the entirety of the \$750 retainer fee to Muncey. However, respondent returned this fee only after she and Muncey had entered into a settlement in connection with Muncey's fee arbitration filing.

In aggravation, we consider the default status of this matter. "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).

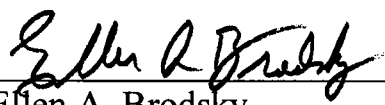
Moreover, respondent has not learned from her past mistakes. In her prior disciplinary action, she was issued an admonition for strikingly similar misconduct. Specifically, in 2014, respondent was admonished for violations of RPC 1.3, RPC 1.4(b), and RPC 1.4(c), when she failed to act with diligence after her client's complaint was dismissed, failed to return the client's repeated phone calls and e-mails for almost an entire year, and failed to explain to the client problematic issues with the client's claims.

Under the principle of progressive discipline, and in light of the default nature of these proceedings, enhanced discipline is warranted to protect the public and preserve confidence in the bar. We, thus, determine that a censure is the appropriate quantum of discipline in this matter.

Chair Clark and Member Boyer voted for a reprimand. 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

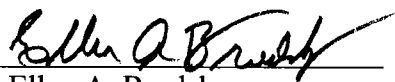
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frances Ann Hartman
Docket No. DRB 19-239

Decided: January 29, 2020

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph				X
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	2	0	1


Ellen A. Brodsky
Chief Counsel