Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-299
District Docket No. XIV-2017-0434E

In the Matter of

Laura M. Rys

An Attorney at Law

Decision

Decided: March 27, 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 Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); RPC 1.15(d) and R. 1:21-6(a)(2) (recordkeeping deficiencies); RPC 8.1(a) (false statement of material fact in connection with a disciplinary matter); RPC 8.1(b) (failure to cooperate with

disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[1]

For the reasons set forth below, we determine to impose a one-year suspension, to run consecutively to respondent's six-month suspension imposed on January 31, 2020.

Respondent earned admission to the New Jersey bar in 1993 and to the New York bar in 1996. On August 25, 2014, she was declared ineligible to practice law for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). On November 17, 2014, she was declared ineligible to practice law for failure to comply with continuing legal education requirements. On October 27, 2015, she was declared ineligible to practice law for failure to comply with the Interest on Lawyers' Trust Accounts program. Effective April 25, 2016, the Court temporarily suspended her for failure to comply with the fee arbitration determination underpinning this matter. In re Rys, 224 N.J. 442 (2016).

On January 31, 2020, respondent was suspended for six months, in another default matter, for violating RPC 1.15(d); RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that its omission is reasonably certain to

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

mislead the tribunal); RPC 5.5(a)(1) (unauthorized practice of law); RPC 8.1(a); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Rys, __ N.J. __ (2020), 2020 N.J. LEXIS 114 (2020). She remains suspended to date. The misconduct underlying that matter occurred from August 2015 through August 2016.

Service of process was proper. On April 3, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home and office addresses of record. On May 6, 2019, the certified mail sent to respondent's home address was returned "unclaimed, return to sender, unable to forward," and on May 16, 2019, the certified mail addressed to respondent's office also was returned indicating "return to sender, no such number, unable to forward." The regular mail sent to respondent's home and office addresses was not returned.

On June 11, 2019, the OAE sent a letter to respondent, by certified and regular mail, to the home and office addresses, informing her that, unless she filed a verified 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 charge a willful violation of RPC 8.1(b). A certified mail receipt was not returned, but the regular mail sent to both the home and office

addresses was not returned.

As of August 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 OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

In June 2014, Marie Innamorato retained respondent to represent her in a guardianship action in Monmouth County. Respondent had not previously represented Innamorato. Between June and July 2014, Innamorato paid $30,000 in legal fees to respondent. Respondent did not maintain an attorney business account (ABA), as required by the Court Rules, until she opened one, on November 5, 2014, and, thus, failed to deposit these fees in an ABA.[2]

On October 29, 2014, Innamorato terminated the representation and requested an accounting of respondent's fees and costs and reimbursement of her $30,000. Because respondent neither produced an accounting nor returned the fee, Innamorato filed a request for fee arbitration. Thereafter, in connection with the fee arbitration proceeding, respondent offered conflicting stories about her fee arrangement with Innamorato.

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[2] As previously noted, on August 25, 2014, respondent became administratively ineligible to practice law for her failure to pay the annual assessment to the CPF. Nevertheless, the complaint did not charge respondent in this matter with a violation of RPC 5.5(a)(1) (unauthorized practice of law) for continuing to represent Innamorato while ineligible to do so.

In her fee arbitration response, dated April 13, 2015, while certifying that all her statements were true, respondent admitted that she had failed to provide a written fee agreement or fee letter to Innamorato, but claimed that her fee agreement with Innamorato was $250 "per hour plus legal expenses out-of-pocket disbursements." At the fee arbitration hearing, in August 2015, respondent alleged that she had entered into an oral agreement with Innamorato and her daughters, Linda Forgie and Dena Dileo, for a $30,000, non-refundable, flat fee. According to Forgie and Dileo, however, respondent was supposed to bill against the $30,000 retainer for fees and costs, at a rate of $250 per hour.

On August 14, 2015, the Fee Arbitration Committee (the Committee) issued its decision, awarding a $16,599.87 refund to Innamorato. After the issuance of the Committee's decision, however, respondent failed to refund those monies to Innamorato, resulting in her April 25, 2016 temporary suspension from the practice of law.

On September 6, 2017, the OAE directed respondent to submit a written reply to the ethics grievance that Innamorato had filed against her. On September 22, 2017, Young Yu, Esq., an attorney representing respondent in the pending disciplinary matter, acknowledged the OAE's directive that respondent file a response to the grievance by September 29, 2017. Thereafter, on October 2, 2017, the OAE received a written response to the grievance from respondent's

counsel. In that response, contrary to respondent's fee arbitration response, Yu asserted that respondent had provided Innamorato with a "written engagement letter for her services in exchange for a fee earned upon receipt," but that she was unable to "locate a copy of the agreement despite a diligent search."

On January 8, 2018, the OAE notified respondent of a scheduled interview on January 24, 2018 and directed the production of several documents. On January 31, 2018, the OAE interviewed respondent, who was accompanied by Yu. On February 5, 2018, the OAE reminded Yu of the outstanding documents and requested their production by February 22, 2018. On February 23, 2018, Yu represented to the OAE that he would send the outstanding documents. On February 28, 2018, the OAE received only the documents related to the request that respondent produce "any written or electronic correspondence or any other writing relating to whether or not the $30,000 was a flat fee retainer, earned upon receipt, or whether the money was supposed to be held for future attorney's fees and costs."

By letter dated March 9, 2018, the OAE again asked Yu to produce, by March 21, 2018, the outstanding documents, including a copy of all negotiated checks for the $30,000 fee and bank statements for the account in which the funds were deposited. The OAE also requested that respondent produce an accounting of her time on the case, and a written explanation for her failure to

refund any of the fee to Innamorato prior to the fee arbitration hearing. Respondent failed to provide these documents, accounting, and explanation.

On March 28, 2018, Yu informed the OAE that respondent had ceased communicating with him and that he was still waiting for her to produce the requested documents. On April 5 and July 9, 2018, the OAE wrote to Yu, requesting the outstanding documents by April 16 and July 19, 2018, respectively. In both letters, the OAE warned Yu that, if these documents were not received, respondent would be subject to a disciplinary complaint charging her with violating RPC 8.1(b). Neither Yu nor respondent replied to the OAE's letters.

Finally, on October 15, 2018, the OAE wrote to Yu about the outstanding documents, asked whether he still represented respondent, and requested that he confirm respondent's home address. On October 16, 2018, Yu replied that neither he, nor his firm, were still representing respondent. However, Yu provided the OAE with respondent's office address in New York, and instructed respondent to inform the OAE if she had a new home address or had retained new counsel.

Based on the above allegations, the formal ethics complaint charged respondent with having violated RPC 1.5(b); RPC 1.15(d); RPC 8.1(a); RPC 8.1(b); and RPC 8.4(c).

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 RPC 1.5(b) by failing to provide to Innamorato, whom she had not previously represented, a writing setting forth the basis or rate of her legal fee. Further, she failed to maintain an ABA, as R. 1:21-6(a)(2) requires, and thus violated RPC 1.15(d) by failing to deposit earned legal fees in such an ABA. Respondent also violated both RPC 8.1(a) and RPC 8.4(c) by knowingly making false statements of material fact to the OAE. Specifically, she represented to the OAE that she had provided Innamorato a written fee agreement, despite having previously admitted to the Committee that no such agreement existed. Finally, she violated RPC 8.1(b) both by failing to produce the requested records to the OAE and by failing to file an answer to the formal ethics complaint.

In sum, we find that respondent violated RPC 1.5(b); RPC 1.15(d); RPC 8.1(a); RPC 8.1(b); and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's unethical conduct.

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 in a matrimonial case).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014). Even in the absence of a negligent misappropriation, however, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that had been brought to his or her attention previously, or the attorney has prior discipline for similar misconduct. See, e.g., In re Michals, 224 N.J. 457 (2015) (reprimand by consent; an OAE audit revealed that the attorney had issued trust account checks to himself or others for personal or business expenses; however, because he maintained sufficient personal funds in his trust account, he did not invade client funds; following a prior admonition for negligent misappropriation of client funds and recordkeeping violations, the attorney still failed to resolve several improprieties); In re Murray, 220 N.J. 47 (2014) (reprimand by consent; a

random compliance audit by the OAE revealed that the attorney had not corrected some of the same recordkeeping violations for which he had been admonished one month earlier); and In re Colby, 193 N.J. 484 (2008) (attorney violated the recordkeeping rules; although the recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, the attorney had previously been reprimanded for the same violations and for negligent misappropriation).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. 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); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and the client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for pool attorney with the Office of the

Public Defender (OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c) found); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority; failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to segregate disputed funds; failed to comply with the recordkeeping rule; and failed to cooperate with disciplinary authorities); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics

committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Ordinarily, an admonition or a reprimand is imposed for failure to cooperate with disciplinary authorities, absent aggravating factors. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (admonition for attorney who ignored three letters from a district ethics committee investigator seeking information about a grievance; he also lacked diligence in the representation of his client and failed to communicate with him); In re Kaigh, 231 N.J. 7 (2017) (default; attorney reprimanded for failing to submit a written reply to the grievance; he also lacked diligence and failed to communicate with a client); In re Saluti, 214 N.J. 6 (2013) (reprimand for attorney who failed to reply to three letters from the district ethics committee requesting a reply to a grievance; two prior admonitions); and In re Kurts, 206 N.J. 558 (2011) (reprimand for gross neglect, lack of diligence, failure to communicate with the clients, and failure to cooperate with disciplinary authorities in two client

matters; attorney also failed to enter into a written fee agreement with the clients).

Here, respondent's misrepresentation to the OAE is not as egregious as that of attorneys who created fraudulent documents to justify their misconduct. But her conduct is more serious than that of the attorneys in DeSeno, Sunberg, and Otlowski, who received reprimands and a censure for lying to the OAE. Unlike these attorneys, respondent blatantly lied to the OAE by representing that a retainer agreement existed and that she simply was unable to locate it, even after she had certified, in respect of the fee arbitration proceedings, that she had failed to provide a retainer agreement to Innamorato. She also committed additional ethics violations. As a result, the baseline quantum of discipline for the totality of her misconduct is a three-month suspension.

To craft the appropriate discipline in this case, we must consider both mitigating and aggravating factors. We find no mitigating factors in this record. In aggravation, we first 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). In light of the default nature of these proceedings, enhancement of the term of suspension to six months is warranted.

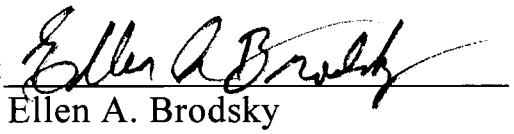
In further aggravation, we ascribe significant weight to the harm to the client in this case and respondent's demonstrated lack of respect for New Jersey's regulations governing attorneys, our disciplinary system, and our fee arbitration process. Despite being ineligible to practice law in New Jersey, respondent once again did so in this matter. Then, after being ordered by the Committee to disgorge to Innamorato $16,599.87 of the $30,000 fee, she failed to do so, resulting in her temporary suspension. Such disregard for the determination of the Committee evidences respondent's lack of respect for the Rules governing New Jersey attorneys and is proof of harm to her client, a significant aggravating factor. Moreover, this matter represents respondent's second consecutive default in a New Jersey disciplinary matter, despite having a heightened awareness of the requirement that she comply with disciplinary authorities, originating from the timing of her prior default and disciplinary suspension.

We, thus, determine that a one-year suspension, to run consecutively to respondent's six-month suspension imposed on January 31, 2020, is the quantum of discipline necessary in this matter to protect the public and preserve confidence in the bar.

Member Joseph voted for a censure, Member Singer voted for a six-month suspension, and Vice-Chair Gallipoli voted to recommend respondent's disbarment to the Court.

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 Laura M. Rys
Docket No. DRB 19-299

Decided: March 27, 2020

Disposition: One-Year Suspension

Members	One-Year Suspension	Disbar	Six-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	1	1	1	0	0

Ellen A. Brodsky
Chief Counsel