

client of how, when, and where the client may communicate with the lawyer); RPC 1.4(b) (failure to communicate with the client); RPC 1.5(a) (unreasonable fee); RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); RPC 3.2 (failure to expedite litigation); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) (two counts).¹

The formal ethics complaint in District Docket No. XI-2016-0020E charged respondent with violations of RPC 1.5(a), RPC 1.5(c) (upon conclusion of a contingent fee matter, failure to provide the client with a written statement of the outcome of the matter and, if there was a recovery, showing the remittance to the client and the method of its determination), and RPC 1.15(a) (failure to safeguard client funds).

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

Respondent was admitted to the New Jersey bar in 1984. Since 2013, she has been ineligible to practice law due to her failure to comply with mandatory continuing legal education requirements. In connection with these matters, she represented that she has ceased the practice of law.

In 2018, respondent received an admonition for gross neglect and lack of diligence, involving her failure to prosecute a client's matter and to refund to

¹ In October 2017, we remanded this case after granting respondent's motion to vacate a default. Thereafter, the DEC assigned a 2018 docket number to the matter.

the same client the unearned portion of an advance retainer. In the Matter of Diane Marie Acciavatti, DRB 18-162 (July 23, 2018).

The Katherine Glasser Matter (Docket No. XI-2018-0013E)

Katherine Glasser retained respondent to appeal the adverse outcome of a legal malpractice action that Glasser had pursued. Respondent and Glasser executed a written retainer agreement and Glasser paid respondent a \$20,000 fee. The retainer agreement provided that respondent would file a notice of appeal; file and serve the transcript; attend a pre-argument settlement conference, if one were scheduled; prepare and file the appellate brief and appendix; review the responding brief; file a reply brief; attend oral argument; and prepare and file motions for a stay pending appeal. Respondent admitted that she failed to prosecute Glasser's appeal, resulting in its dismissal, and then failed to inform Glasser that the appeal had been dismissed.

Respondent further admitted that she neither replied to Glasser's inquiries regarding the status of the appeal nor informed her that a subsequent motion to vacate the dismissal had been denied. The appellate brief in Glasser's matter originally was due on May 22, 2012. Although respondent claimed that she had obtained an order extending the due date of her brief to June 22, 2012, on July 13, 2012, Glasser's appeal was dismissed, because respondent failed to timely

file a brief. Respondent subsequently failed to reply to Glasser's telephone calls and e-mail inquiries regarding the status of the matter.

Glasser discovered that her appeal had been dismissed only when, almost a year after the dismissal, her husband directly contacted the Appellate Division regarding the case. Glasser's husband then located respondent, who agreed to file a motion to vacate the dismissal. In respondent's lengthy and remorseful certification in support of the motion to vacate, she admitted that she had failed to reply to Glasser's prior inquiries, and revealed that, from April through August 30, 2012, she had been enrolled in an outpatient treatment program. She further certified that she had been focused on her wellbeing and, as a result, her practice of law had suffered.

In 2013, after Glasser discovered the dismissal of her appeal, she filed a request for fee arbitration. Respondent did not reply to that request until 2015, when she informed the fee arbitration committee that she had discharged her \$20,000 debt to Glasser, via bankruptcy. Glasser testified that she was never informed about the bankruptcy, and learned, after the fact, that respondent had sent her bankruptcy information to the secretary of the fee arbitration committee, rather than to Glasser's home address, which was known to respondent. Glasser never received notice of the bankruptcy from the fee arbitration committee. Accordingly, by the time Glasser learned of the bankruptcy, her opportunity to

challenge the discharge, as a creditor, had expired. Glasser further testified that she was informed that she cannot file an application for restitution, presumably the New Jersey Lawyer's Fund for Client Protection, until she receives a judgment from the fee arbitration committee or secures a finding of unethical conduct against respondent.

Respondent testified that she had received Glasser's request for fee arbitration before she filed for bankruptcy, pro se, in 2014, and, therefore, believed it was no longer permissible for her to directly contact Glasser. She admitted that she knew Glasser's home address, but believed that she was required to communicate with Glasser through the secretary of the fee arbitration committee, at the secretary's address, because the request for arbitration had originated from the committee. She testified that she was wary of violating the RPCs by having direct communication with Glasser. Respondent, thus, claimed she sent communications intended for Glasser, including the notice of creditors' meeting, to the fee arbitration secretary, believing that the secretary would forward those communications to Glasser.

Respondent conceded that she had not returned the retainer to Glasser, despite repeated requests, prior to the bankruptcy filing, explaining that she did not have the funds to do so. She denied, however, that she had failed to provide proper notice of the bankruptcy to Glasser.

Respondent admitted that her failure to timely file the appellate brief and to prosecute the appeal in behalf of Glasser constituted gross neglect, lack of diligence, and failure to expedite litigation, in violation of RPC 1.1(a), RPC 1.3, and RPC 3.2; that her failure to keep Glasser informed of the status of the appeal was improper and deceitful, in violation of RPC 1.4(a), RPC 1.4(b), and RPC 8.4(c); and that the totality of her misconduct demonstrated a pattern of neglect, in violation of RPC 1.1(b). Respondent denied, however, that she failed to set forth, in writing, the basis of her legal fee for the appeal, and had violated RPC 1.5(b), or that the discharge of her \$20,000 debt to Glasser violated RPC 8.4(c).

Respondent proffered significant affirmative defenses and mitigating circumstances in respect of the Glasser matter. She represented that, in 2000 or 2001, she was diagnosed with serious medical issues, which are detailed in the record, for which she was prescribed effective medications that allowed her to become fully functional. She testified that her physician never explained to her, however, that the medications could lose their effectiveness after a period of years, requiring new medications to be prescribed. In about 2011, respondent began to again experience gradually worsening symptoms of her prior medical issues. These symptoms were much more severe than the original symptoms in 2000 or 2001, and she became barely functional. Although, at that time, she believed she could still work, she later recognized how greatly her condition had

deteriorated. Respondent complained of the symptoms to her prescribing physician, who increased her dosages, but declined her request for different medications. She also saw different doctors, but none would change her medications.

Respondent then began drinking alcohol to ease her symptoms, and, consequently, became an alcoholic. Her alcohol abuse, combined with her other mental health issues, hindered her ability to function and meet her professional obligations. From April to August 2012, she completed an outpatient program for alcohol abuse, and has remained sober since April 2012. While in the program, she began working twelve-hour to fourteen-hour days, seven days per week, in a “desperate attempt to catch up on her legal work.” Although respondent was successful in completing work in many of her cases, she was overwhelmed with the amount of backlogged work, and was unable to become current on all her cases, despite her persistence.²

In March 2013, respondent’s medical issues reached a crescendo, resulting in her hospitalization. She finally learned that her medications lose effectiveness over a period of years, and she received new medications which were effective in alleviating and managing her medical issues. When her health

² Respondent, therefore, was sober when she received the June 2012 order dismissing Glasser’s case. She did not have a “good explanation” for failing to inform her of the dismissal.

was reaching its nadir, respondent requested a colleague to apply for appointment of a trustee for her practice, which he did, and a trustee was appointed. She testified that she was nonfunctional as a professional from sometime in 2011 until she began taking the new medication, in March or April 2013, at which time she ceased practicing law.³ Her medications continue to be effective and have restored her ability to function. To date, she continues treatment. She fully cooperated with the trustee, transferring all her paper and electronic files to the trustee, who then transferred them to new counsel.

Respondent testified to her belief that her above-described issues were a “sign” that she should no longer practice law. The Glasser matter was one of the factors that influenced her decision to stop practicing. She closed her law office, and removed her signage and her listings as a practicing attorney. She represented that she has not practiced law since March 2013, has no intention of ever practicing again, and is “extremely remorseful” for her misconduct.

³ The presenter noted that, in January 2012, respondent was functioning professionally to the extent that she was able to prepare and customize Glasser’s retainer agreement, and require and accept the \$20,000 fee. The presenter stated that, although respondent was taking on business, she told the panel that she was nonfunctional professionally. Respondent replied that her symptoms began to snowball, that there were times she could function at a “very high level,” and other times when she would be non-functioning. She asserted that, by early 2013, she was no longer functioning and claimed “that’s when I gave up.”

The Darcy Smith Matter (Docket No. XI-2016-0020E)

Darcy Smith and respondent entered into an undated retainer agreement for representation in a legal malpractice action against three attorneys – Calello, Urbinato, and Lindemann – who had previously represented Smith. Smith testified that she had the agreement, which provided that she would pay respondent a \$10,000 initial retainer and would receive a credit for that amount upon completion of the case, whereupon a contingent component of the retainer agreement would be applied. It further specified that Smith would pay all litigation expenses, estimated to be \$20,000 to \$30,000.

In respect of recovery, the agreement provided that the contingent component of respondent's fee would be calculated based on any legal fees returned to Smith via settlement, plus any "savings" on defendant Calello's counterclaim for legal fees. In other words, if defendant Calello waived or reduced his asserted legal fees, the amount of such waived fees would be included in the basis for respondent's contingent fee. Respondent claimed that the "savings" provision was standard in legal malpractice retainer agreements. Smith testified that she understood this "savings" provision in the retainer agreement.

Respondent confirmed that the written retainer agreement mentioned Calello, but made no reference to Urbinato or Lindemann. Respondent claimed,

however, that she and Smith verbally amended the retainer agreement to add the additional defendants. On or about March 2, 2010, Smith paid respondent \$40,000, comprising the \$10,000 advanced retainer and \$30,000 toward expenses. Ultimately, the litigation expenses amounted to the entire \$30,000.

The underlying legal malpractice action settled, in respect of Urbinato and Lindemann, for \$75,000. Moreover, their counterclaim against Smith, for more than \$60,000 in alleged legal fees owed, was dismissed with prejudice. The remaining attorney defendant, Calello, did not settle.

On March 8, 2012, respondent sent Smith a fully executed copy of a "Settlement Disbursement Statement," which memorialized respondent's calculation of her earned legal fee as \$25,000, or one-third of the gross settlement of \$75,000. The settlement statement also disclosed that Smith was to receive net proceeds of \$50,000, and that no funds were allocated for litigation expenses. Respondent neither deducted expenses of \$30,000 from the gross settlement amount nor credited Smith with the \$10,000 advanced fee. Respondent, thus, took a contingent fee of \$35,000 from the \$75,000 gross settlement, contending that Smith had consented to that amount.

The settlement statement also provided that, in exchange for respondent's waiver of her right to a contingent fee for the "savings" in respect of settling Urbinato and Lindemann's \$60,000 in legal fees that were dismissed, the

deduction for the expenses of \$30,000, as well as the \$10,000 advanced retainer, would be deferred until the resolution of claims of the remaining defendant, Calello. The written settlement statement, thus, purported to modify the retainer agreement. Respondent maintained that she discussed these terms and the proposed settlement statement with Smith, who verbally agreed to the modifications. On March 8, 2012, respondent also sent Smith two e-mails, further attempting to explain the terms of the statement, including the waiver and deferment modifications

Respondent testified that defendant Calello was her “target” in the malpractice litigation, because she believed that his representation had resulted in the greatest economic injury to Smith. She recalled that he had a \$500,000 malpractice insurance policy and that her goal was to obtain the entire policy amount. She claimed that, over the course of two years, she performed a substantial amount of work on the case, including analyzing over 10,000 pages of Bates-stamped documents produced in discovery. She deposed the defendants, and Smith was deposed for six full days.

According to respondent, the significant amount of work that she already had performed was the reason that she had proposed to defer the \$10,000 credit and the \$30,000 litigation expense deduction, as addressed in the March 8, 2012 e-mails:

I would like to be paid 25k from the 75k settlement, in recognition of two years of hard work on the case. In the freakish event we do not recover against Calello, I would then owe you money based on recalculating my fee from the 75k settlement, but bear in mind I did agree to waive a fee on the savings on legal fees due to Urbinato and Lindemann which would have been a fee of 20k.

[T37;2R5].^{4 5}

Respondent had prepared for trial against defendant Calello, as his attorney had indicated that he would not settle. She vehemently opposed his motion to compel arbitration, but it was granted. Her representation of Smith then concluded, because she ceased practicing law. Ultimately, Smith agreed to a settlement whereby Calello did not pay any money, but his counterclaim for unpaid legal fees was dismissed with prejudice. Respondent expressed surprise that Smith had not recovered against defendant Calello, because she believed the recovery should have been the entire \$500,000 policy limit.

Respondent admitted that the settlement statement she had provided to Smith should have been clearer in explaining that Smith would receive credit for both the \$10,000 retainer and \$30,000 in litigation expenses, but believed

⁴ Respondent testified that she did not calculate the \$20,000 savings as part of the \$75,000 settlement, because she had waived it.

⁵ “T” refers to the transcript of the January 17, 2019 ethics hearing, and “2R5” refers to respondent’s Exhibit 5 in the Smith matter.

she had clarified this accord via the March 8, 2012 e-mail. Respondent testified that Smith would receive the \$30,000 expense deduction regardless of whether Smith recovered damages against defendant Calello.

Respondent never returned the \$40,000 to Smith, comprising the \$10,000 advanced retainer and the \$30,000 in litigation costs. Smith testified that she understood she was going to be refunded the \$40,000. In turn, respondent testified that she believed Smith was entitled to the \$10,000 refund, but the \$30,000 in expenses should have been deducted from the gross recovery before the calculation of her fee. Respondent claimed that she was entitled to \$15,000, which was one-third of \$45,000 (\$75,000 minus the \$30,000 in expenses); that, because Smith was entitled to receive a \$10,000 credit for the advanced retainer, respondent was actually entitled to \$5,000 from the settlement, for a total of \$15,000; and that she actually took \$25,000 from the settlement funds, plus the \$10,000 advanced retainer, for a total of \$35,000.

Respondent contended that Smith also received the benefit of being relieved of the legal fees owed to the two settling defendants, and that those two defendants were not identified in the retainer agreement because she did not know, when she prepared the argument, that they would be filing counterclaims for unpaid legal fees. Respondent argued that, based on the circumstances and substantial work performed, her fee was reasonable. She denied that she

misappropriated any portion of her \$35,000 fee. Respondent contended that the proposed Settlement Disbursement Statement, to which Smith had agreed, modified the retainer agreement, and that the modification benefitted Smith, because respondent agreed to waive the “savings” in respect of the dismissed claim for legal fees by attorneys Urbinato and Lindemann.

* * *

The hearing panel found that, in respect of the Glasser matter, respondent violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by failing to timely file the appellate brief, which caused the dismissal of Glasser’s appeal, and by subsequently failing to timely file a motion to vacate the dismissal. Next, the panel determined that respondent had violated RPC 1.4(b) by failing to communicate with Glasser, for months, regarding the status of her appeal.

The panel found that respondent’s \$20,000 fee was not unreasonable on its face, and that the retainer agreement between respondent and Glasser adequately identified the work to be performed. The panel concluded, however, that respondent violated RPC 1.5(a) by keeping the entire \$20,000 retainer as her fee, because she failed to perform almost all of the legal services listed in the agreement. The panel did not address whether respondent violated RPC 1.5(b).

The panel additionally determined that respondent violated RPC 8.4(c) by failing to disclose to Glasser that she had not filed the brief, and that her appeal had been dismissed. The panel found insufficient evidence, however, to conclude that respondent's conduct in respect of including Glasser's \$20,000 debt in respondent's personal bankruptcy proceeding violated RPC 8.4(c).

The panel decided that respondent was not guilty of violating RPC 1.4(a), as there was no evidence that she failed to provide Glasser with her accurate contact information. Additionally, the panel determined that, although respondent's conduct in the Glasser matter constituted neglect, there was no such allegation in the Smith matter, and three instances of neglect are required for a pattern of neglect (HPR15). Therefore, the panel dismissed the RPC 1.1(b) charge.

In sum, the panel found respondent guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 3.2, and RPC 8.4(c) (one count). The panel found respondent had not violated RPC 1.1(b), RPC 1.4(a), and one count of RPC 8.4(c).

In the Smith matter, the hearing panel found that the signed settlement statement did not adequately explain why respondent did not credit Smith for the \$30,000 she had paid toward litigation expenses. The unsigned disbursement settlement statement disclosed that Smith agreed to defer the advanced retainer

and litigation expense credits until resolution of the claim against defendant Calello. Ultimately, Smith netted a total of only \$10,000 from the \$75,000 in settlement proceeds, because she previously paid the \$10,000 advanced retainer plus \$30,000 in expenses.

The panel concluded that respondent recovered a total fee of \$35,000, which represented more than 46% of the gross recovery and more than 77% of the net recovery. The panel determined that respondent's explanation of her fee, which the settlement statement purportedly authorized, was "problematic on many levels." First, the original retainer agreement provided that respondent could charge a contingent fee only on the savings of Calello's legal fees, not the other two settling defendants. Thus, there was no basis to support her attempt to alter the terms of the retainer agreement by citing the savings in respect of the settlement with Urbinato and Lindemann. Next, the signed settlement statement addressed the \$10,000 advanced retainer credit, but not the \$30,000 expense credit. Consequently, there was no support for respondent's failure to reimburse the expenses before she calculated her fee.

The panel, thus, determined that respondent violated RPC 1.5(a), because her total legal fee of \$35,000 was unreasonable, comprising 77% of the net recovery to Smith. Further, the panel determined that respondent violated RPC 1.5(c) by neither crediting Smith for the advanced retainer, nor reimbursing the

paid expenses, and by recouping a fee that violated the retainer agreement. Finally, the panel found that respondent violated RPC 1.15(a) by calculating her fee based on the gross recovery, instead of the net amount, after deducting the expenses, in violation of the retainer agreement.

In sum, the panel found respondent guilty of violating RPC 1.5(a), RPC 1.5(c), and RPC 1.15(a).

In mitigation, the panel considered that respondent's medical issues coincided with her misconduct in both client matters, and that respondent is no longer practicing law. In aggravation, the panel emphasized that the misconduct in the Glasser matter was similar to the circumstances of respondent's past admonition, where she failed to return a \$2,500 fee despite performing no work on the client's case. Lastly, the panel found that the resulting harm to the client was significant in both matters – Glasser was denied her right to appeal and could not recover her legal fees paid to respondent, due to respondent's bankruptcy, and Smith did not receive the settlement proceeds to which she was entitled.

The panel recommended a three-month suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Specifically, in the Glasser matter, respondent violated RPC 1.1(a) and RPC 1.3 by failing to timely file an appellate brief in behalf of Glasser, resulting in the dismissal of her appeal, and by failing to file a timely motion to vacate the dismissal. Respondent's lapses extinguished Glasser's opportunity for recovery.

Making matters worse, respondent violated RPC 1.4(b) by failing to timely reply to Glasser's requests for information regarding the status of the appeal, and violated RPC 8.4(c) via her misrepresentation by silence, whereby she failed, for a prolonged period, to inform Glasser that she had not filed the appellate brief, and that, consequently, the appeal had been dismissed. Glasser inquired multiple times, by phone and correspondence, but respondent inexcusably ignored her inquiries. Glasser discovered that her appeal had been dismissed only after her husband contacted the Appellate Division directly, about a year after the dismissal order had been entered.

We determine, however, to dismiss the charge that respondent violated RPC 1.1(b). To find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, respondent's only neglect occurred in respect of the Glasser matter.

We also dismiss the RPC 1.4(a) charge, as there is no evidence that respondent failed to provide Glasser with her accurate contact information.

In addition, the record does not support the RPC 1.5(a) charge that respondent's fee was unreasonable. If respondent had performed the work contemplated by the retainer agreement, her fee might have been reasonable. Rather, respondent failed to return the unearned portion of her retainer, a violation of RPC 1.16(d). Because the complaint did not charge respondent with a violation of that RPC, however, we may not find a violation of that Rule.

Moreover, we determine that respondent did not violate RPC 1.5(b), because she communicated the basis of her fee in a written retainer agreement, which Glasser signed. As a result, the record does not support the RPC 1.5(b) charge.

Next, we dismiss the RPC 3.2 charge as inapplicable to these facts, because the charged violations of RPC 1.1(a) and RPC 1.3 adequately address respondent's failure to perform work in behalf of Glasser. RPC 3.2 is typically reserved for litigation-specific ethics violations, such as failing to comply with case management orders or specific court deadlines. Finally, we agree with the hearing panel that respondent did not violate RPC 8.4(c) by including Glasser's debt in her bankruptcy proceedings.

In sum, in respect of the Glasser matter, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c) (one count). We determine to dismiss the remaining allegations that she violated RPC 1.1(b), RPC 1.4(a), RPC 1.5(a) and (b), RPC 3.2, and one count of RPC 8.4(c).

In the Smith matter, we find that respondent violated RPC 1.5(a) and RPC 1.5(c), but the record lacks sufficient evidence to support the RPC 1.15(a) charge.

Respondent violated RPC 1.5(a) by disbursing to herself a legal fee of \$35,000 from a \$75,000 settlement, in violation of her contingent fee arrangement with Smith. Regardless of respondent's initial entitlement to recover from the "savings" on the defendants' counterclaims for unpaid legal fees, she subsequently agreed that she had waived any such entitlement. In addition, she admitted that, once she knew she would not pursue the case against defendant Calello, her proper fee should have included a reimbursement for prepaid expenses (\$30,000), and a deduction for the retainer advanced by Smith (\$10,000), leaving respondent with a disbursement of \$5,000 (\$10,000 advanced retainer plus \$5,000 amounts to \$15,000 in total legal fees). In any event, respondent retained \$35,000 in fees, and neither reimbursed Smith for expenses nor credited her the advanced retainer. Consequently, respondent collected a

\$35,000 (\$25,000 plus \$10,000 advanced retainer) fee on a \$75,000 recovery, representing 77% of her client's net recovery, a per se unreasonable fee.

Further, respondent violated RPC 1.5(c) which requires a lawyer, upon conclusion of a contingent fee matter, to provide the client with "a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination." Respondent failed to provide to Smith a revised settlement sheet, crediting the advanced retainer and deducting the paid expenses, in violation of the retainer agreement and purported modifications, when the representation ended. Regardless of whether the retainer agreement subsequently was amended by the settlement statement, respondent never pursued the case against defendant Calello. When her representation of Smith concluded, she should have provided a revised settlement sheet to Smith, showing the adjusted disbursements, and forwarded to Smith her additional, adjusted settlement proceeds.

Respondent did not violate RPC 1.15(a), however, because she amended her retainer agreement with the settlement statement, and the parties agreed that she would defer the deduction of expenses and \$10,000 credit until the litigation against defendant Calello had concluded. We, thus, conclude that the record does not support the alleged RPC 1.15(a) violation.

In sum, respondent violated RPC 1.5(a) and (c) in respect of the Smith matter. We dismiss the charge that she violated RPC 1.15(a).

Accordingly, in two client matters, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(a) (one count), RPC 1.5(c), and RPC 8.4(c) (one count). We determine to dismiss the charges that she violated RPC 1.1(b), RPC 1.4(a), RPC 1.5(a) (one count), RPC 1.5(b), RPC 1.15(a), RPC 3.2, and RPC 8.4(c) (one count). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

A reprimand is the minimum measure of discipline for a misrepresentation to a client. See, In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Watson, 236 N.J. 493 (2019) (attorney failed to inform his clients that their complaint had been dismissed for lack of prosecution, referred the case to another law firm without the clients' permission, and failed to reply to his client's repeated requests for documents; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); the attorney's failure to inform his clients of the dismissal of the complaint was a misrepresentation by silence, in violation of RPC 8.4(c); he committed additional misrepresentations by telling one of his clients that he had filed paperwork to obtain a judgment, and by promising to send to the client

documents that did not exist; in mitigation, we noted the attorney's remorse, the remedial measures he had put in place to prevent a recurrence of the misconduct, and his unblemished disciplinary history); In re Ruffolo, 220 N.J. 353 (2015) (attorney guilty of gross neglect and a lack of diligence for 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) and 1.4(c) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace and that he should expect a monetary award in the near future, despite knowing that the complaint had been dismissed, were false, in violation of RPC 8.4(c)); and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed in her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's unblemished thirty-four years at the bar was outweighed by his inaction, which left the client with no legal recourse).

If the fee charged by an attorney is so excessive as to evidence an intent to overreach the client, a reprimand is required. See, e.g., In re Doria, 230 N.J.

47 (2017) (attorney refused to return any portion of a \$35,000 retainer after the client terminated the representation, a violation of RPC 1.5(a); we upheld a fee arbitration determination awarding the client the return of \$34,100 of the \$35,000 retainer; we determined that the fee was so excessive as to evidence an intent to overreach; the attorney promptly returned the \$34,100 to the client) and In re Read, 170 N.J. 319 (2002) (attorney charged grossly excessive fees in two estate matters and presented inflated time records to justify the high fees in violation of RPC 1.5(a), RPC 1.5(b), and RPC 8.4(c); strong mitigating factors considered including the lack of an ethics history in forty-five years at the bar and the attorney's retirement from the practice of law).

Standing alone, a violation of RPC 1.5(c) typically would result in an admonition. See In the Matter of Michael S. Kimm, DRB 09-351 (January 28, 2010) (attorney improperly calculated his contingent fee on the gross recovery, rather than on the net recovery, a violation of RPC 1.5(c); the attorney also improperly advanced more than \$17,000 to his client, prior to the conclusion of her personal injury case, a violation of RPC 1.8(e); although the attorney had been censured previously, we did not consider it in aggravation because it had been imposed for entirely different misconduct).

Further, we must consider the aggravating and mitigating factors. In aggravation, the harm to both clients in the present case was significant, in that

Glasser's appeal was extinguished, and Smith never received her proper allocation of her settlement funds. Moreover, respondent's prior admonition involved misconduct similar to her behavior in the Glasser matter. In both cases, respondent failed to perform the services for which she was hired, failed to refund the unearned portion of the retainer, and discharged her debt to the client in bankruptcy.


In mitigation, respondent was experiencing severe medical issues when she committed the misconduct in these matters. We find that respondent's medical issues had a direct impact on her ability to function and practice law. We also consider that, as of March 2013, respondent is no longer practicing law.

On balance, we determine that a censure is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Member Joseph voted to impose a three-month suspension. Vice-Chair Gallipoli voted to impose a one-year suspension. Member Boyer 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

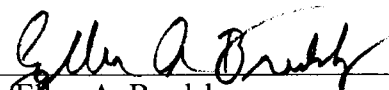
In the Matter of Diane Marie Acciavatti
Docket No. DRB 19-321

Argued: January 16, 2020

Decided: March 31, 2020

Disposition: Censure

<i>Members</i>	Censure	Three-Month Suspension	One-Year Suspension	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	0	1


Ellen A. Brodsky
Chief Counsel