Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-392
District Docket No. XIV-2015-0267E

In the Matter of

Rosemarie Tubito

An Attorney at Law

Decision

Argued: May 21, 2020

Decided: August 11, 2020

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for a three-month suspension filed by the District VI Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false and failing to take reasonable remedial

measures if the lawyer learns that the evidence is false); RPC 3.3(a)(5) (failure to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal); RPC 3.4(a) (unlawfully obstructing another party's access to evidence or unlawfully altering, destroying or concealing a document or other material having potential evidentiary value, or counseling or assisting another person to do any such act); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to dismiss the charges against respondent.

Respondent was admitted to the New Jersey bar in 2004. During the relevant timeframe, she maintained an office for the practice of law in River Vale, New Jersey. Respondent has no disciplinary history.

These ethics charges arise out of respondent's alleged alteration of a retainer agreement that her former client, David Hecht, signed and her submission of that altered retainer agreement to a fee arbitration committee and to a civil court addressing the parties' dispute over legal fees.

In May 2012, David Hecht, Ira Rothbaum, and Itzhak Pearl retained respondent regarding a land use matter – the unwanted development of property,

known as Brooks Farm (the Farm), near their residences in Closter Township, New Jersey. Hecht, Rothbaum, and Pearl, along with other residents of Closter, formed the Closter Residents Protection Group (CRPG) to attempt to preserve the Farm.

At that time, respondent, a solo practitioner, concentrated on land use matters. Her staff consisted of one full-time employee, T.A., and one part-time assistant, respondent's sister-in-law. Respondent had nearly one hundred active files and, due to her busy schedule, was often out of the office.

T.A., an experienced paralegal, was primarily responsible for the operations of respondent's law office. Among other duties, T.A. supported respondent in the drafting, preparation, and filing of litigation matters, as well as the drafting and execution of retainer agreements.

Respondent's initial discussions with the members of CRPG focused on the payment of her legal fees, the CRPG members' personal liability regarding those fees, and the potential incorporation of CRPG. Respondent informed the members of CRPG that she required clarity regarding their personal responsibility for the payment of her legal fees. Although the group expressed an interest in incorporating, it never did, and respondent never asked the group to incorporate.

On May 23, 2012, at respondent's direction, T.A. prepared retainer agreements for the CRPG matter and sent copies to Hecht and Rothbaum, via e-mail, with instructions to sign and return them to respondent's office. T.A. did not pursue an executed retainer agreement from Pearl, despite respondent's instruction that she do so. That same day, Rothbaum executed the retainer agreement, both individually and in behalf of CRPG, and returned the retainer agreement to respondent's office, via fax.

The next day, May 24, 2012, T.A. sent Hecht an e-mail stating that she would commence work on the case, upon receipt of the signed retainers and the initial fee. Prior to returning the retainer agreement to respondent's office, Hecht modified it by striking the words "individually and" by the signature line for his name. He did so with the intent to shield himself from any personal liability in respect of CRPG. Hecht then signed his name, and either hand-delivered or e-mailed a copy of the modified agreement to respondent's office.

Hecht offered conflicting versions about how he delivered the executed retainer agreement to respondent's office. He informed the Office of Attorney Ethics (OAE), and later testified before the DEC, that he scanned and sent to respondent, via e-mail, an electronic copy of the signed, modified retainer agreement. In respect of the original, Hecht testified that he had retained the original signed, modified agreement but also testified that he had personally

delivered the original to respondent at her office. Then, during cross-examination, after acknowledging these two conflicting statements, Hecht testified that he eventually gave the original, modified retainer agreement to a forensic expert. Hecht admittedly did not have any discussions with respondent or her staff about the retainer agreement or his modification to it.

There were also conflicting accounts as to whether respondent was aware of Hecht's modified retainer agreement prior to commencing work on CRPG's matter. Respondent denied having seen the retainer agreements prior to starting work in the matter. She also denied that T.A. had brought any issues regarding the retainers to her attention.

T.A. claimed that, at respondent's request, she had shown the executed retainer agreements to her. However, during her OAE interview, which preceded the ethics hearing, T.A. made no such claim.

It is undisputed that, once T.A. informed respondent that she had received the signed retainers and an initial $5,000 fee, respondent commenced work on the matter. From March through October 2012, she billed $33,214.69 and received $13,000 in fees. Eventually, the members of CRPG informed respondent that they could no longer afford her services. On November 16, 2012, respondent filed a motion to withdraw as counsel, which the court granted, over the objection of the members of CRPG.

On January 3, 2013, respondent sent an invoice to CRPG, in care of Hecht, its treasurer, seeking an outstanding fee balance of $20,214.69. Respondent also sent letters to CRPG and Rothbaum, with copies to Pearl and Hecht, stating that, if they failed to pay her outstanding legal fees, she would take legal action to collect them.

On February 1, 2013, Rothbaum submitted a request for fee arbitration to the District IIA Fee Arbitration Committee (the Committee) and attached an unexecuted version of the retainer agreement that respondent had sent to Rothbaum, Hecht, and CRPG. On February 6, 2013, respondent filed a complaint in the Superior Court of New Jersey, Bergen County, Law Division, against Rothbaum, Hecht, Pearl, and CRPG, jointly and severally, and in the members' individual capacities, for her unpaid legal fees. Respondent failed to comply with R. 1:20A-6, which requires attorneys to provide a pre-action notice to clients prior to filing suit to collect legal fees.

Attached to respondent's civil complaint as Exhibit "A" was a copy of the executed retainer agreement between respondent, CRPG, Rothbaum, and Hecht. Page two of the exhibit was the page signed by Rothbaum; page three was the page that contained Hecht's signature. Underneath Hecht's signature, the words "individually and" were stricken.

By letter dated January 31, 2013, the Secretary of the Committee notified the Superior Court of New Jersey of the docketed fee arbitration matter and requested a stay of a civil matter.[1] On February 12, 2013, the Committee docketed Rothbaum's fee arbitration request. On March 1, 2013, the Committee Secretary sent a copy of Rothbaum's request, including a copy of the unexecuted fee agreement that Rothbaum had submitted, to respondent with instructions for her to provide a reply within twenty days.

On March 20, 2013, respondent submitted a reply to the fee arbitration request, attaching a copy of the retainer agreement between herself, Rothbaum, Hecht, and CRPG, in which the words "individually and" were not stricken. Thus, this version materially differed from the exhibit attached to respondent's civil complaint.

By letter dated March 26, 2013, Lawrence Kleiner, Esq., Rothbaum's attorney, informed the Committee that Rothbaum wished to withdraw his fee arbitration request. At the ethics hearing, respondent testified that Kleiner had advised Rothbaum to settle, because the group had not incorporated and, thus, Rothbaum potentially faced personally liability exceeding his pro-rated share of

[1] It is unclear why this letter was sent prior to the docketing of Rothbaum's fee arbitration request or the docketing of respondent's civil action.

the outstanding legal fee. Rothbaum settled with respondent for $6,000. On April 1, 2013, the fee arbitration matter was dismissed, and the civil litigation resumed.

The trial court granted Pearl's motion for summary judgment, dismissing him from the case, because he had not signed a retainer agreement. Respondent was surprised, because she had instructed T.A. to pursue a signed retainer agreement from Pearl and assumed it had been done.

Edward Zizmor, Esq. represented respondent in the civil litigation. On October 24, 2014, respondent and Hecht, who was the only remaining defendant, proceeded to trial before the Honorable Robert C. Wilson, J.S.C. Judge Wilson was aware of the two versions of the signed retainer agreement, and of Hecht's dispute over the authenticity of one of the versions.[2]

During the civil trial, respondent contended that the members of CRPG were individually liable for her fee because they never formed a group. She also addressed the conflicting versions of the retainer agreements. In her direct examination, she testified that she had received the unlimited retainer agreement from Hecht, but did not mention that this version differed from the limited

[2] From this point forward, we refer to the version of the retainer agreement that Hecht modified as the "limited" version of the retainer agreement, and the other version of the retainer agreement, which did not contain Hecht's modification, as the "unlimited" version of the retainer agreement.

version she had attached as an exhibit to her complaint, or that both versions of the retainer agreement had been in her file. However, during cross-examination, respondent admitted that she had attached to her complaint the limited version of the retainer agreement, in which the words "individually and" had been stricken. Thus, the limited version was admitted into evidence. On redirect examination, respondent testified that she "believed" she first saw the limited version of the retainer agreement when it was submitted in the fee arbitration matter, and that she attached that version to the complaint because she "may have just pulled it from the package that was submitted to fee arb when I was putting together my complaint."

The OAE alleged that respondent's statements were false because, when she received the Committee's packet, it included only an unexecuted retainer agreement. The OAE, thus, asserted that respondent had misled the trial court into believing that the limited version of the retainer agreement had been presented by the defendants in the fee arbitration matter, as respondent had been in possession of the fee arbitration paperwork prior to her preparation and filing of the complaint.

Respondent subsequently testified that it was her belief that she first saw the limited retainer agreement in the fee arbitration matter, because it would have been in "the normal course of events," but she eventually realized that her

initial assertion was inaccurate. She specifically said that she "believed" this was the case because it is her practice to use that term when she is not sure of something, rather than making a definitive statement. However, before the DEC, she unequivocally stated that she did not knowingly and willfully testify falsely before Judge Wilson.

At the conclusion of respondent's testimony in the civil trial, her counsel argued

> Your Honor, we have the case of two certifica -- two retainers, and logic dictates that the original retainer is the one without a cross out. I mean, there's a certain logic to that. You can't have a blank one -- you can't have one with a cross out and then make uncrossed out. And obviously what happened here was Mr. Hecht, like Mr. Rothbaum, sent in retainers with individual responsibility. He cannot even say how Ms. Tubito got one without a cross out on. There's no explanation of that. But what happened is later, when they got into the fee arb situation, this one magically appeared with a cross out.
>
> Now, Rose Tubito did the work. The CRPG was never a real entity, so even on the crossed out [version] he'd be liable. But I think it's also key that he didn't cross out on the first page that he would have, you know, individual responsibility.
>
> [C¶54;A¶54;Ex.J-14T96].[3]

[3] "C" refers to the formal ethics complaint, dated December 29, 2016; "A" refers to respondent's answer, dated February 13, 2017; and "Ex.J-14T" refers to the October 20, 2014 trial transcript in the civil action.

Following the parties' arguments, Judge Wilson ruled in favor of respondent, finding that Hecht did not completely strike the words "individually and" from the limited retainer agreement – the first sentence of the retainer agreement was not crossed out and, thus, memorialized Hecht's individual liability; respondent performed the contracted services; and she submitted regular billed invoices that the clients paid. In concluding his ruling, Judge Wilson found that there had been a clear meeting of the minds between respondent and the members of CRPG regarding their personal liability for her fees, "and that's why it was insisted that this specific retainer agreement provided for individual liability, as opposed to a non-incorporated name that was created by the parties." He, thus, found that, in agreeing to the representation and performing the legal services, respondent had relied on that acceptance of personal liability by the members of CRPG. Finally, he couched Hecht's objection to paying his share of respondent's fee as "buyer's remorse."

Following the trial, Hecht arranged for Karl Schaffenberger, a certified forensic document examiner, to analyze the signature pages of both the limited and unlimited versions of the agreement. Schaffenberger opined that the unlimited version of the retainer agreement, which respondent had offered at trial, had been altered, to eliminate the striking out of the words "individually and" from the limited version.

On January 19, 2015, armed with this expert opinion, Jonathan McMeen, Esq., Hecht's counsel, filed a motion to vacate the judgment, alleging that respondent had committed misconduct by submitting a fraudulent document. Once notified of Schaffenberger's expert opinion, respondent consulted Zizmor, and hired her own forensic expert to review both versions. Respondent's expert agreed with Schaffenberger that the unlimited version of the retainer agreement had been altered.

Respondent and Zizmor found this information "shocking." Zizmor counseled respondent to consent to vacating the judgment because it was based, in part, on a fraudulent document. Respondent accepted his advice and consented to vacate the judgment against Hecht.

At the ethics hearing, Zizmor testified that, when he reviewed a copy of respondent's file, he observed the two different versions of the retainer agreement with Hecht's signature. He never saw the original retainer until Hecht's attorney entered it as an exhibit at the civil trial. In response to Zizmor's question, respondent told him that she did not have the original retainer and that her secretary had given respondent both versions. She stated that she "had been sloppy" in attaching the limited version as an exhibit to the complaint.

After viewing the two versions, Zizmor spoke to McMeen before the trial, in an attempt to settle the matter, and mentioned the limited version, telling

McMeen, albeit incorrectly, that it was not logical for the limited version to precede the unlimited version. Zizmor and respondent had believed that the unlimited version was the authentic retainer agreement, and, thus, had sought to introduce that version at the trial. They did not introduce the limited version, because they believed that it had been doctored by Hecht, although they did not know how or when that occurred. A few months after the verdict, Zizmor learned that the unlimited version was the fraudulent version.

According to Zizmor, when Hecht provided his expert's opinion, respondent never appeared to have any reservation about retaining her own expert, and she was in "total shock" when her expert agreed with Schaffenberger. Zizmor had no idea that he had introduced a fraudulent version of the retainer agreement at the trial. He also did not believe, either at the time of the trial or during the disciplinary hearing, that respondent had personal knowledge that the unlimited version submitted in evidence was fraudulent.

On April 10, 2015, Judge Wilson entered a consent order vacating the judgment against Hecht, and dismissed respondent's complaint with prejudice and without costs.

On April 28, 2015, Hecht filed an ethics grievance against respondent, alleging that she had submitted fraudulent documents to a tribunal. On October 7, 2015, respondent, through counsel, replied that neither Hecht, nor his

attorney, McMeen, had noticed the discrepancy between the two versions of Hecht's signature page at trial, and that "[i]t was only after trial that Mr. Hecht suspected that a document had been altered, and he hired" an expert. She further asserted that both she and Zizmor were similarly "unaware that two separate copies of the document had been presented as part of the action in Superior Court. In fact, Ms. Tubito was not aware of the discrepancy in the documents until she was served a copy of the motion to vacate."

On November 16, 2015, respondent's counsel submitted an amended reply to the grievance, acknowledging that she had incorrectly stated that the discrepancy between the two documents was not noticed until after the trial, and that neither the parties, nor the judge, had been aware that two different documents had been before the court. Respondent's counsel asserted that a certification from respondent attached to his correspondence explained that she had "not consult[ed] with the attorney who represented her in the trial court, Edward Zizmor, Esq., or review[ed] the trial materials or transcript prior to the submission of her response to the grievance. After speaking with Mr. Zizmor and reviewing the trial materials, [respondent] realized that her recollection of some of the trial proceedings was inaccurate." In respondent's certification, she asserted that she had "no knowledge of when the document was altered, who

altered the document, or how the altered document came to be in [her] possession."

In January 2015, respondent fired her paralegal, T.A., after respondent learned that T.A. had misused a firm credit card and, among other reasons, that her work performance had deteriorated to the point that respondent suspected T.A. was intentionally harming cases.

At a February 24, 2016 OAE interview, respondent did not assert that T.A. had altered the signature page; that T.A. alone had drafted and signed the complaint; or that T.A. alone had completed the fee arbitration response. However, respondent did accuse T.A. of making unauthorized purchases on her business credit card, in 2014, prompting the OAE to request an additional explanation from respondent. By letter dated May 27, 2016, counsel for respondent provided a list of seventeen unauthorized credit card charges, only two of which T.A. admitted having mistakenly made. Respondent successfully disputed these charges with her credit card company as being unauthorized.

At the ethics hearing, Hecht, T.A., Zizmor, and respondent testified. None of them had personal knowledge regarding who had created the altered, unlimited retainer agreement; no witness testified regarding direct knowledge that respondent had altered the document.

There were conflicting accounts of who prepared and filed the fee arbitration response and civil complaint, including who attached the two versions of the retainer agreements. Respondent testified that T.A. drafted the language of the fee agreement; compiled respondent's reply to Rothbaum's fee arbitration request, including gathering the attachments; prepared and signed the civil complaint in her behalf; and prepared the exhibits for respondent's civil trial. However, in an earlier statement to the OAE, respondent had stated that she believed that she had reviewed the entire contents of both the complaint and the fee arbitration reply before submitting both. This recollection also conflicted with Zizmor's testimony, regarding respondent's statement that "she had been sloppy with that by attaching it" to the complaint. Respondent asserted that, at the time her attorney fee arbitration reply was assembled, she did not know that, in the version of the retainer agreement attached, the words "individually and" had not been stricken.

T.A. also provided conflicting accounts of her involvement. She previously had told the OAE that her duties included helping respondent prepare the attachments that were included with the fee arbitration paperwork. She recalled that, when respondent was reviewing the retainer agreement to attach to the fee arbitration matter, T.A. found two different retainer signature pages for Hecht. T.A. recalled being "shocked and upset" when the two versions were

found. Still, she did not bring this discrepancy to respondent's attention; instead, she claimed that respondent first learned of the discrepancy "after the papers were filed because somebody brought it up to [respondent's] attention that there were two signature pages." Before the DEC, T.A. also testified that she did not assemble the exhibits for the fee arbitration reply.

At the ethics hearing, to explain the submission of the fabricated, unlimited retainer agreement, respondent alleged that T.A. might have altered the fee agreement. Her counsel conceded, however, that that was mere speculation.

At the conclusion of the ethics hearing, the OAE withdrew its allegation that respondent violated RPC 3.4(a), "in the light of [T.A.'s] trial testimony that she did not witness respondent alter the Hecht signature page."

Following the ethics hearing, the DEC determined that there was clear and convincing evidence that respondent violated RPC 3.3(a)(1); RPC 3.3(a)(4); RPC 3.3(a)(5); and RPC 8.4(c). Specifically, the DEC found that respondent knowingly committed these violations because it was "not probable for Respondent to so rely on [T.A.] in this situation – and not care about the execution of the fee agreement by Hecht, nor follow up on the fee agreements' execution." The DEC emphasized that respondent was aware "that the corporate structure of CRPG was important for her to collect fees;" "that the group was

never incorporated prior to her relationship nor did she so engage in incorporating the group;" "there was discussion about liability both as a group and individual;" and "she was aware that the group was unhappy with their prior counsel, primarily over billing." As a result, the DEC concluded that respondent

> was aware that there were two copies of the Hecht fee agreement in her files, one with "individually and" crossed out, and one without, and yet she misled and did not inform either tribunal (the fee arbitration or the trial court) of the documents' existence, or that she was so aware, and so continued so with testimony to the OAE, as [r]espondent was seeking compensation from Hecht which she could not obtain without the altered document. She testified that she did not care "if [Hecht] crossed it out." Further, the fact that Respondent did not want to originally commit to vacate the matter or compensate her client Hecht for his cost in clearing his name after the altered document was verified by outside third expert shows lack of remorse or care to her client.
>
> [HPR¶61.][4]

The DEC rejected, without explanation, the OAE's theory that respondent violated RPC 8.4(b) by violating N.J.S.A. 2C:21-4a (falsifying or tampering with records).

In aggravation, the DEC found that respondent had attempted to deceive the tribunal; continued a course of dishonesty and misrepresentation; lacked candor to the court and to the hearing panel; lacked remorse; failed to remediate

[4] "HPR" refers to the hearing panel report, dated August 27, 2019.

despite opportunities to do so; and injured the client, including the litigation and expert costs Hecht had incurred.

In mitigation, the DEC found that respondent has good character and a good reputation, based on character references she provided; has performed charity and pro bono work; has no disciplinary history; and provides service to her community.

The DEC recommended the imposition of a three-month suspension.

Following a de novo review of the record, we determine that the record contains insufficient evidence to support any of the charged allegations against respondent. Simply put, there is no clear and convincing evidence that respondent either altered the retainer agreement or knew that the unlimited version had been altered when she offered it as evidence during the civil suit against Hecht.

Specifically, each of the charged RPCs require respondent to have knowledge that she was submitting a fraudulent document to the tribunals, at the time she was doing so, such that respondent had "actual knowledge of the fact in question." RPC 1.0(f). Although circumstantial evidence can support a finding of actual knowledge, in our view, the record does not support such a finding by clear and convincing evidence.

The Court described the clear and convincing standard in In re James, 112 N.J. 580, 585 (1988) (citations omitted), as

> [t]hat which "produces[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."

In In re Purrazzella, 134 N.J. 228 (1993), the Court dismissed alleged violations of RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 4.1, and RPC 8.4(c), based on a lack of clear and convincing evidence. Specifically, the DEC found that a matrimonial attorney had altered a psychiatric report concerning her client, and then submitted it to a trial court as evidence in a child custody matter. Id. at 229. The question of who had altered the report – whether it was the attorney or her client acting without the attorney's knowledge – was contested. Id. at 232-33. During the course of the litigation, the attorney provided the false record to the trial court, then requested that the same document be given to the court's expert, to whom the original records were to be made available, thereby increasing the chances that the alteration would be discovered. Id. at 233-240. We agreed with the DEC's findings. However, the Court disagreed, finding that the proposition that an experienced matrimonial attorney would do such a thing did not accord with common sense. Id. at 240.

Here, the evidence is uncontroverted that respondent attached the limited retainer agreement, which Hecht unilaterally had modified, as an exhibit to her civil complaint, and that she filed that complaint prior to submitting her fee arbitration response, with included the altered, unlimited version of the agreement, to the Committee.

At the civil trial, both versions of the retainer agreement were admitted into evidence by respondent. Respondent's prior counsel directly addressed the trial court regarding the two versions and, thus, the trial court knew that there were two versions of the retainer agreement. As respondent's counsel explained before the DEC, the unlimited version was admitted into evidence at the trial, although the limited version had been attached as an exhibit to the complaint, because both respondent and her counsel had suspected that Hecht had, somehow, provided a "doctored" version that ended up in respondent's file. Neither respondent nor her counsel knew how two versions came to be, rather, they were simply speculating, based on theories of motive. The parties had theories then, and they have theories now, about who created this doctored version, but they are only theories, because none of the witnesses in this matter had any personal knowledge regarding who altered the retainer agreement.

The fact that respondent was aware that two different versions of the retainer agreement existed does not establish that she knowingly misled the

tribunals. Rather, as she would later learn, her office submitted the authentic, limited retainer agreement to the trial court first, as an attachment to her complaint. At the time the fraudulent, unlimited retainer agreement was offered in evidence, neither respondent, nor her counsel, knew it was fraudulent.

Regardless of the purported importance placed on Hecht's decision to unilaterally cross out "individually and" by his signature, the first line of the retainer agreement was unaltered. Importantly, the trial court addressed this very point in its findings. Thus, regardless of which version of the retainer agreement was offered, it appears that it would not have made a difference to the trial court, because CRPG never legally existed. Consequently, as Judge Wilson concluded, there had been a clear meeting of the minds between respondent and the members of CRPG regarding their personal liability for her fees, and respondent had relied on that acceptance of personal liability by the members of CRPG in agreeing to the representation and performing the legal services.

The evidence also is uncontroverted that expert witnesses examined the documents after the trial. Both experts opined that the unlimited version of the retainer agreement was fraudulent. When respondent and her counsel discovered this information, they were both shocked, and promptly consented to vacating the judgment, thus, remediating any attempt to knowingly mislead the trial court.

Most importantly, none of the witnesses at the hearing testified that respondent was the one who altered the document; none of the witnesses testified that they knew who altered the document; and none of the witnesses testified that respondent knew the document was fraudulent at the time she offered it to the trial court. Thus, no evidence was offered, testimonial or otherwise, to support the fact that respondent actually knew which of the retainer agreements was fraudulent, prior to submitting the altered retainer agreement to the tribunals. At best, the DEC could only speculate regarding who altered the retainer agreement. Such speculation does not constitute clear and convincing evidence. Accordingly, we find insufficient evidence to support any of the charges of unethical conduct against respondent.

Respondent's style of practice and her former overreliance on her paralegal may have been unwise, but that does not establish that she had actual knowledge that the document she offered before the tribunals was fraudulent. We, thus, determine to dismiss all charges against respondent.

Vice-Chair Gallipoli voted to impose a censure. Members Petrou and Zmirich voted to impose a reprimand.

Disciplinary Review Board
Bruce W. Clark, Chair

By: _____
for: Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Rosemarie Tubito
Docket No. DRB 19-392

Argued: May 21, 2020

Decided: August 11, 2020

Disposition: Dismiss

Members	Dismiss	Reprimand	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	2	1	0	0

For: Ellen A. Brodsky
Chief Counsel