Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 19-450 and
DRB 19-473
District Docket Nos. IV-2018-0011E and
IV-2018-0049E

In the Matter of

Susan A. Lowden

An Attorney at Law

Decision

Decided: November 19, 2020

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

These matters were before us on certifications of the record filed by the District IV Ethics Committee (DEC), pursuant to R. 1:20-4(f), and have been consolidated for the imposition of discipline. The formal ethics complaint in DRB 19-450 charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) and (c) (failure to

communicate with a client); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[1]

The formal ethics complaint in DRB 19-473 charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c); RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee); RPC 8.1(b); and RPC 8.4(c).

For the reasons set forth below, we determine to impose a two-year suspension, with conditions.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1991. During the relevant time, she maintained a law practice in Haddonfield, New Jersey.

In 2014, respondent received a reprimand for gross neglect; lack of diligence; failure to communicate with a client; failure to provide a written fee agreement; failure to cooperate with disciplinary authorities; and misrepresentation to her client. Respondent also was directed to complete a course in law office management within ninety days of the date of the Court's Order, and to provide the Office of Attorney Ethics with proof that she did so. In re Lowden, 219 N.J. 129 (2014).

[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.

On September 21, 2016, respondent received a censure for gross neglect; lack of diligence; failure to communicate with a client; and misrepresentation. In re Lowden, 226 N.J. 586 (2016).

On April 12, 2019, respondent was temporarily suspended from the practice of law for failure to comply with a Fee Arbitration Committee (FAC) determination to pay a $3,000 award to a former client. In re Lowden, 237 N.J. 211 (2019). On November 25, 2019, respondent again was temporarily suspended for failure to comply with a second FAC determination to pay a $14,413 award to a former client. In re Lowden, 240 N.J. 101 (2019).

On March 26, 2020, in a single-client default matter, the Court suspended respondent for six-months for gross neglect; lack of diligence; failure to communicate with a client; failure to set forth in writing the basis or rate of the fee; failure to cooperate with disciplinary authorities; and multiple misrepresentations to the client. In re Lowden, 241 N.J. 495 (2020).

Respondent remains suspended to date.

Service of process was proper in both matters. On June 14, 2019, the DEC sent a copy of the formal ethics complaint in DRB 19-450, by certified and regular mail, to respondent's home address of record. The certified mail receipt was returned, dated June 17, 2019 and bearing an illegible signature. The regular mail was not returned.

On July 17 and September 23, 2019, the DEC sent letters to respondent, by regular mail, to her home address, informing her that, unless she filed a verified answer to the complaint within five days of the date of the letters, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The regular mail was not returned.

As of November 19, 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.

In DRB 19-473, on September 24, 2019, the DEC sent a copy of the complaint, by certified and regular mail, to respondent's home address. A certified mail receipt was returned, dated September 25, 2019 and bearing an illegible signature. The regular mail was not returned.

On November 6, 2019, the DEC sent a letter to respondent, by regular mail, to her home address, containing the same information as the letters sent to her in DRB 19-450. The regular mail was not returned.

As of December 11, 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 complaints.

The Embry Matter – DRB 19-450, District Docket No. IV-2018-0011E

In March 2016, Tiffany Embry consulted respondent regarding representation for a divorce and related matters, including custody; parenting time; child support; equitable distribution; and attorneys' fees and costs.

On March 31, 2016, respondent provided Embry with a written retainer agreement, which Embry signed on June 8, 2016. By then, Embry had made payments toward the fee. Respondent told Embry that, when respondent received payment of the full $1,350 retainer, she would send a certified letter to Embry's spouse and would file the divorce complaint.

In March 2017, Embry made the final payment toward the retainer and expected respondent to proceed. Between March and December 2017, respondent misrepresented to Embry that she had sent a certified letter to Embry's spouse and that she had filed the divorce complaint. Respondent also made false statements to Embry concerning delays in her case, claiming that, due to a "postal situation," the letter and complaint "must have gotten lost in the mail," and that further delay was caused by the court system. Respondent promised to travel to the courthouse to investigate. When Embry requested a status update, respondent told her that she had "taken care of everything." All

those statements were untrue.

Respondent failed to provide Embry with billing invoices or copies of correspondence, filed pleadings, or other documents that Embry had requested, on several occasions, between March and December 2017.

Based on these facts, and respondent's failure to file an answer, the complaint in the Embry matter charged respondent with violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c); RPC 8.1(b); and RPC 8.4(c).

The Rulli Matter – DRB 19-473 - District Docket No. IV-2018-0049E

In July 2016, Brian C. Rulli retained respondent for a divorce and related issues concerning a prior child support obligation, equitable distribution, and attorneys' fees and costs. Respondent failed to provide Rulli with a written retainer agreement as R. 5:3-5 requires in all family court matters. For safekeeping, Rulli provided to respondent the original title to his 2006 Audi automobile.

Despite the passage of a year, respondent failed to file a divorce complaint or to take any other action in Rulli's behalf, such as contacting Rulli's spouse. Respondent further failed to provide Rulli with billing invoices, correspondence, pleadings, or other documents in his case.

From July 2016 to July 2017, respondent misrepresented to Rulli that she was "waiting to hear from the Court," or "waiting to hear from the Child Support Office," and made other statements intended to mislead Rulli that the divorce complaint had been filed and the matter was proceeding apace.

Respondent also failed to reply to the DEC investigator's correspondence or telephone calls, failed to reply to the ethics grievance, and failed to file an answer to the complaint.

Based on these facts, the complaint in the Rulli matter charged respondent with violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c); RPC 1.5(b); RPC 8.1(b); and RPC 8.4(c).

* * *

We find that the facts recited in the complaints support the charges of unethical conduct. Respondent's failure to file verified answers to the complaints is deemed an admission that the allegations of the complaints are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In the Embry matter, the client retained respondent in March 2016 for a divorce and related issues. Embry promptly began making payments toward the agreed $1,350 retainer. On June 8, 2016, Embry signed the written fee agreement respondent had provided in March of that year. Respondent told Embry that a

certified letter would be sent to her spouse upon payment of the full $1,350 retainer and that the complaint for divorce then would be filed. Although, by March 2017, Embry had paid respondent's full retainer, respondent accomplished neither task and took no action to file a complaint or otherwise advance Embry's matter. Respondent's inaction constituted gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Respondent also failed to provide Embry with any billing invoices, copies of correspondence, filed pleadings, or other documents, despite Embry's several requests for that information. For her failure to keep Embry reasonably informed about the status of the matter, to reply to Embry's requests for information, and to explain the matter to the extent reasonably necessary for Embry to make informed decisions about the representation, respondent violated RPC 1.4(b) and (c).

From March through December 2017, respondent made misrepresentations to Embry, falsely claiming that she had sent Embry's spouse a certified letter and that she had filed a divorce complaint in Embry's behalf. Respondent also lied about delays in the case, claiming that the certified letter and complaint had been lost in the mail, and that the courts had caused further delay. Respondent also falsely claimed to have traveled to the courthouse to investigate the matter. Afterward, she misrepresented to Embry that she had

"taken care of everything." All those misrepresentations constituted violations of RPC 8.4(c).

Finally, for respondent's willful failure to cooperate with disciplinary authorities, for which the complaint was amended, she is guilty of having violated RPC 8.1(b).

In the Rulli matter, the client retained respondent in July 2016 to file a divorce action. She failed to provide her client with a written fee agreement, a requirement in civil family court matters pursuant to R. 5:3-5, and a violation of RPC 1.5(b).

Upon her retention, respondent accepted the original title to Rulli's automobile for safekeeping, but took no action to file a complaint for divorce or to address any of the related issues, including a prior child support obligation. Respondent, thus, displayed gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Further, respondent failed to provide Rulli with any documentation in the case that would have informed him about the status of the case, including a fee agreement; regular billing invoices; time sheets; copies of correspondence in the matter; and pleadings in the case. Respondent's failure to keep Rulli reasonably informed about the status of the case violated RPC 1.4(b). Moreover, respondent failed to explain the events in the matter to the extent reasonably necessary for

Rulli to make an informed decision about the representation, a violation of RPC 1.4(c).

In addition, for respondent's willful failure to cooperate with disciplinary authorities and her failure to file an answer to the complaint, she is guilty of having violated RPC 8.1(b).

Finally, respondent made a series of misrepresentations to Rulli. She falsely told him that she had filed a complaint for divorce, when she had not done so. Thereafter, she misled him by claiming that delays in the case were caused by the court and the child support office. Finally, respondent falsely told Rulli that his case was proceeding apace. Respondent's repeated misrepresentations were violations of RPC 8.4(c).

In sum, we find that, in both matters, respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c); RPC 8.1(b); and RPC 8.4(c). In the Rulli matter, we find that respondent also violated RPC 1.5(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most serious misconduct was her brazen, repeated lies to her clients in sensitive family law matters. A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by ethics infractions similar to those found in the instant case, such as gross

neglect, lack of diligence, and failure to communicate with the client. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); in addition, the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting that motion, or that the court had dismissed her complaint for failure to serve answers to interrogatories and to comply with the court's order, in violation of RPC 1.4(c); violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2 also found); In re Ruffolo, 220 N.J. 353 (2015) (attorney made assurances to the client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that a statement that the client should expect a monetary award in the near future also was false, thereby violating RPC 8.4(c); the attorney had permitted his client's case to be dismissed, never 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), RPC 1.3, and RPC 1.4(b) also found); and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, 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 were outweighed by his inaction, which left the client with no legal recourse).

In isolation, 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 Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, a violation of RPC 1.5(b); failure to abide by the client's decisions concerning the scope of the representation also found; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, a violation of RPC 1.5(b); concurrent conflict of interest also found; no prior discipline); and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, a violation of RPC 1.5(b); failure to communicate with the client and failure to communicate the method by which a contingent fee will be determined also found; no prior discipline).

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).

Like respondent, the attorney in Dwyer misrepresented the status of a matter to his client to obscure his abject neglect. Like respondent, the attorneys in Dwyer, Ruffolo, and Braverman also engaged in gross neglect and lack of diligence and failed to communicate with their clients.

To craft the appropriate discipline, however, we also must consider aggravating and mitigating factors. In aggravation, in September 2014, the

Court reprimanded respondent for neglecting a client's 2001 family court matter and lying to the client about the status of the case. Nine years passed without action by respondent in that case. As the result of her neglect, a $70,000 judgment was entered against the client. In the Matter of Susan A. Lowden, DRB 13-387 (May 21, 2014) (slip op. at 3-4).

In September 2016, respondent was censured for neglecting a client's 2006 divorce matter and, six years later, lying to the client that she had recently filed the complaint for divorce. In the Matter of Susan A. Lowden, DRB 15-269 (May 11, 2016) (slip op. at 11-12). The grievance and disciplinary proceedings in the censure matter pre-dated respondent's misconduct in these matters. Thus, she was on notice then that her conduct was under scrutiny. Respondent should have had a heightened awareness of her duty to serve her clients. Yet, she continued to disregard them and their matters.

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

The Court recently imposed a six-month suspension on respondent in a single-client matter (the Spruill matter), involving virtually identical misconduct to the current matters, Embry and Rulli. In our Spruill decision, we stated:

> Through this third disciplinary matter, respondent has established an alarming penchant for grossly neglecting clients' matters, and then lying to the client in an attempt to conceal her inaction. She has demonstrated an inability to learn from her past mistakes, and a pattern of inflicting harm on her clients.
>
> Accordingly, further enhancement of the sanction, from a censure to a term of suspension, is required to protect the public and preserve confidence in the bar.
>
> [In the Matter of Susan A. Lowden, DRB 19-137 (December 6, 2019) (slip op. at 12).]

Here, in further aggravation, by neglecting and lying to the clients in Embry and Rulli, respondent reaffirms her sheer disdain for her own clients – whom she has harmed since 2001. She is a clear danger to the public and these matters merit a significant term of suspension.

In addition, respondent defaulted in 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).

Finally, respondent has taken fees in matters and provided little or no legal services to her clients. Currently, she is under two temporary suspension orders for failing to comply with fee arbitration determinations requiring the return of nearly $20,000 in legal fees.

Respondent essentially abandoned her client in Spruill, the six-month suspension matter, and has continued her pattern of demonstrated disdain for her clients and the disciplinary system in these two default matters.

On balance, we determine that a two-year suspension, consecutive to the six-month suspension in the Spruill matter, is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Respondent is further required to disgorge to both Embry and Rulli, within thirty days of the date of the Court's Order in this matter, the entire fee she accepted, and to provide satisfactory proof of same to the Office of Board Counsel and the OAE.

Vice-Chair Gallipoli voted to recommend respondent's disbarment.

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 Matters of Susan A. Lowden
Docket Nos. DRB 19-450 and 19-473

Decided: November 19, 2020

Disposition: Two-Year Suspension

Members	Two-Year Suspension	Disbar	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	8	1	0	0

Ellen A. Brodsky
Chief Counsel