

the client); RPC 3.2 (failure to expedite litigation); and RPC 8.1(b) (two instances) (failure to cooperate with disciplinary authorities).¹

On January 21, 2021, respondent submitted a motion to vacate the default (MVD). On February 1, 2021, the DEC submitted its opposition to respondent's motion.

For the reasons set forth below, we determine to deny the MVD and, considering the three-month suspension we imposed in DRB 19-477, to impose no additional discipline.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1984 and to the Kansas bar in 1987. During the relevant time frame, she maintained a law practice in Moorestown, New Jersey.

On July 22, 2014, respondent received an admonition for her violation of RPC 1.3 and RPC 1.4(b) and (c). In the Matter of Frances Ann Hartman, DRB 14-138 (July 22, 2014). In imposing an admonition, we considered that, prior to that complaint, respondent had a spotless record in thirty-three years as a member of the bar.

On July 6, 2020, respondent received a censure, in a default matter, for

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

violations of RPC 1.1(a); RPC 1.3; RPC 1.5(b) (failure to set forth in writing the rate or basis of a legal fee); and RPC 8.1(b). In re Hartman, 243 N.J. 76 (2020).

Recently, in another default matter, we determined to impose a three-month suspension on respondent for her violation of RPC 8.1(b) (two counts). In the Matter of Frances Ann Hartman, DRB 19-477 (November 23, 2020). Considering her consecutive defaults and demonstrated pattern of failing to cooperate in New Jersey's disciplinary process, despite her heightened awareness of her obligations as an attorney and the consequences that would follow, we determined to significantly enhance the quantum of discipline. That matter is pending with the Court.

Service of process was proper. On February 19, 2020, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. On February 24, 2020, respondent's legal assistant, Joanne Barley, signed the certified mail return receipt; the regular mail was not returned.

On April 28, 2020, the DEC sent a letter to respondent, by certified and regular mail, to her office address, 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). On April 29, 2020, the certified mail return receipt was signed by “J. Barley;” the regular mail was not returned.

As of May 8, 2020, respondent had not filed an answer to the complaint, and the time within which she was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

We now turn to the allegations of the complaint.

In January 2017, the grievant, Svetlana Aynbinder (Svetlana), retained respondent in connection with a dispute with her brother, Vitaliy Aynbinder (Vitaliy), over the administration of their mother’s estate (the Estate).² Vitaliy had filed an action in Superior Court of New Jersey, Camden County, demanding an accounting and seeking to remove Svetlana as executrix of the Estate. Svetlana paid respondent a \$5,000 retainer for the representation.³

One year later, the court scheduled the matter for mediation. On December 18, 2017, the parties reached a settlement that required that Svetlana provide an accounting to Vitaliy. In January 2018, Svetlana delivered to respondent all the

² The complaint erroneously refers to the grievant as “Syvetlana.”

³ The record does not reveal whether respondent provided Svetlana with a writing setting forth the basis or rate of her fee or whether she previously had represented Svetlana.

materials necessary for respondent to perform the accounting. Although respondent eventually provided Vitaliy's counsel, John Palitto, Jr., with a check from the Estate for attorneys' fees, as the settlement also required, she failed to perform the accounting. Therefore, on March 6, 2018, Palitto filed a motion to enforce the settlement and to remove Svetlana as executrix.

On March 9, 2018, respondent sent Svetlana an e-mail, attaching a copy of the motion to enforce the settlement. The next day, on March 10, 2018, Svetlana sent respondent a text message, seeking details about the motion and asking for an explanation for respondent's failure to complete the accounting. Respondent replied that "[Palitto] is a pain in the ass. It won't cost you anything. I was on vacation and I was busy. So I will get it done; don't worry." In turn, Svetlana asked whether she could be removed as executrix. Respondent answered, "No. The Judge isn't going to care. Honestly [Palitto] is just a baby."

Two days later, on March 12, 2014, Svetlana encountered Palitto at a grocery store and learned that respondent was not returning his calls. Svetlana immediately sent an e-mail and a text message to respondent, seeking an explanation and an immediate return call from respondent. The next day, on March 13, 2018, because she had not heard from respondent, Svetlana sent an e-mail to respondent's law partner and son, R. Frank Cordry, asking whether

everything was “ok with your mom” and expressing her concern regarding the lack of communication. Cordry promptly replied that he would inform respondent that Svetlana was trying to reach her.

That same date, respondent sent Svetlana a text message, claiming that she was busy and representing that she would call Svetlana at 4:00 that afternoon. Svetlana replied that she was very agitated that she repeatedly had called respondent the previous day, to no avail. Svetlana again demanded that respondent call within ten minutes. Respondent reasserted that she would call Svetlana at 4:00 p.m.⁴

Subsequently, on March 20, 2018, respondent requested and received an adjournment, to April 13, 2018, of the hearing on the motion to enforce the settlement. Respondent informed Svetlana of the new hearing date and that Svetlana need not attend.

On April 13, 2018, respondent appeared for the motion hearing; acknowledged that Svetlana had provided her with all the materials needed to conduct the accounting; explained that she required assistance to complete the accounting; and represented to the court that she had hired an individual named

⁴ The record does not address whether that call took place or, if so, what was discussed.

Pam Quattrone to perform the accounting. Respondent apologized to the court and explained that, after February 2018, she was very busy and in court every day. She added that the Estate matter was not “in [her] wheelhouse . . . so it takes me longer.” Respondent also assured the court that, after the “light bulb went off,” she retained Quattrone. Therefore, the court ordered Svetlana to prepare the accounting within thirty days and cautioned that this deadline was the “drop-dead date.”

Upon departing the courthouse, respondent sent a text to Svetlana, informing her that the judge had denied the enforcement motion, that Svetlana remained the executrix, and that Vitaliy “is pissed.” Respondent failed to communicate with Svetlana for the next three months. Respondent further failed to inform Svetlana that she had failed to submit the accounting; that she did not feel competent to do so; that she had hired Quattrone; or that the court had imposed the thirty-day deadline for the completion of the accounting.

Because respondent failed to submit the accounting within the deadline, Palitto filed a motion to enforce the court’s order. Despite proper service, respondent failed to oppose the motion, failed to inform Svetlana of the motion, and failed to appear for the June 15, 2018 hearing on the motion.

At the June 15, 2018 hearing, Palitto informed the court that, in May 2018,

he happened to attend the same function as Quattrone, and asked her the status of the accounting. Quattrone replied that, although respondent had asked for a template for an accounting, she had not formally engaged Quattrone to perform any work. The court then went off the record to call respondent's office to find out why she had not replied to the motion and to inquire whether any work had been performed. The court did not go back on the record.

That same date, the court issued an order removing Svetlana as executrix and appointing Vitaliy as executor of the Estate. Svetlana was not aware that respondent had not provided the accounting; that a second motion had been filed; that a second hearing had taken place; or that she had been removed as executrix.

Three months later, in a September 5, 2018 e-mail, Vitaliy informed Svetlana that she had been removed as executrix. Svetlana immediately sent respondent a text message and demanded a telephone call. Respondent replied that she was out of the office all day undergoing medical tests and that she could meet with Svetlana on the upcoming Sunday. Svetlana sent several more text messages, but the record does not address whether respondent replied to them. Thereafter, Svetlana retained David Thatcher, Esq. Despite his efforts, in

October and November 2018, to communicate with respondent, she neither replied nor provided him with Svetlana's file.⁵

On October 11, 2018, after Svetlana filed the grievance underpinning this matter, the investigator sent a letter to respondent informing her of the investigation, providing a copy of the grievance, and requesting that respondent submit a written reply to it. Respondent failed to reply.

On October 30, 2018, the investigator called respondent's office and left a message with respondent's assistant requesting a return call. Respondent failed to return the call. Also on October 30, 2018, during a DEC interview, Svetlana informed the DEC investigator that she had retained new counsel to continue the Estate litigation, which was ongoing.

On November 5, 2018, the investigator left another message with respondent's assistant, requesting a return call. The investigator also attempted to leave a voicemail message for respondent, but her voicemail box was full. Again, respondent failed to return the call. On November 7, 2018, the investigator sent a second letter to respondent seeking a written reply to the grievance. Again, respondent failed to reply.

⁵ The complaint did not charge respondent with a violation of RPC 1.16(d) (failure to protect a client's interests upon termination of the representation).

On November 16, 2018, the DEC administratively dismissed the grievance due to the ongoing Estate litigation. On June 19, 2019, the DEC reinstated the grievance. Consequently, by letter dated June 26, 2019, the investigator informed respondent that the grievance had been reinstated and requested a written reply to it. Still, respondent failed to reply.

Several months later, on September 17 and 19, 2019, the investigator left voicemail messages at respondent's office. Respondent failed to return those messages. On September 20, 2019, the investigator sent respondent a letter requesting a written reply to the grievance by October 4, 2019, and cautioning her that, if she failed to reply, the investigator would complete her investigation without information from respondent. Once again, respondent failed to reply.

Based on the above facts, the complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by failing to complete the court-ordered accounting and failing to file opposition to the motion to enforce; RPC 1.4(b) by repeatedly failing to adequately communicate with Svetlana and failing to inform her of significant developments in her case; and RPC 8.1(b) (two instances) by failing to cooperate with the ethics investigation and failing to answer the complaint.

On January 21, 2021, respondent submitted an MVD. In order to prevail

on an MVD, respondent must satisfy a two-pronged test: (1) offer a reasonable explanation for her failure to answer the ethics complaint, and (2) assert meritorious defenses to the underlying ethics charges. Generally, if only one of the prongs is satisfied, the motion is denied.

As to the first prong, respondent asserted that she has been a highly regarded member of the bar for thirty-seven years, thirty-three of which were unblemished.⁶ Within the last several years, however, respondent began to suffer from undiagnosed depression and anxiety. Over time, respondent felt increasingly isolated from her friends and colleagues. Despite being able to function, for the most part, at a high level, her “compromised mental state” eventually caught up with her and, as a result, she became “paralyzed” and unable to reach out for the help that she needed. It was not until after a “default was entered against [respondent],” that friends and family became aware of her condition. Since her family has become aware of her situation, respondent has been diagnosed, has begun treatment, and has a positive prognosis.

As to the second prong of the test, respondent asserted several defenses. As to the bulk of the alleged violations – RPC 1.1(a); RPC 1.3; RPC 1.4(b); and

⁶ In support of her character and reputation, respondent submitted several letters from satisfied clients attesting to respondent’s commitment and responsiveness.

RPC 3.2 – respondent argued that the complaint is based on the presenter’s interpretation of Svetlana’s grievance, which is comprised of incomplete statements, relating only a small portion of the overall representation. Additionally, respondent posited that the presenter has drawn conclusions that are not supported by the record. She argued that, ultimately, most of these issues boil down to credibility determinations that should be explored prior to any final adjudication.

In support of these defenses, respondent submitted a certification, with exhibits, purporting to undermine the credibility and character of Svetlana. For example, ten working days after the initial meeting between respondent and Svetlana, Svetlana made a request for a meeting via e-mail. The next night, Svetlana sent another e-mail complaining that respondent was “unwilling to represent her interests” and seems to be “incompetent or simply [does not] have time.” In the same e-mail, however, Svetlana acknowledged having been contacted by respondent’s office, and being upset that she spoke with a receptionist rather than respondent directly.

Several additional examples are provided, but for the sake of brevity, have been omitted here. Respondent argued that the above-referenced communication

and the remaining examples demand a credibility determination that can only be made through a full hearing on the matter.

Respondent's certification failed to address the allegations that she informed the court she would complete the accounting, later admitted it was not in her "wheelhouse," exaggerated her engagement of Quattrone to assist with the accounting, and did not complete the accounting. She also did not address the fact that Quattrone denied any involvement in the matter. The closest respondent came to confronting her failure to complete the accounting is her statement that she got busy with her other work "and pushed the accounting to the back burner." That position fails to rise to the level of a meritorious defense.

As to the remaining violations of RPC 8.1(b) (two instances), respondent acknowledged that she failed to reply to disciplinary authorities. Between her default and submission of a brief in this matter, however, respondent has been diagnosed with "Major Depressive Disorder and Anxiety Disorder." Respondent's doctor submitted a letter supporting respondent's assertions, explaining her disorder, and affirming that her prognosis is positive. That letter details a very difficult childhood; a troubled marriage besieged by her spouse's alcohol abuse; a difficult falling out with her family resulting in her being asked to leave the family law firm, which overall constitute a history of significant

personal struggles.

On February 1, 2021, the DEC submitted a brief in opposition to respondent's MVD. The DEC argued that respondent's motion should be denied for failing to include a verified answer, failing to establish a reasonable explanation for failing to answer the grievance or the complaint, and failing to present meritorious defenses to the charges.

Specifically, as to the first prong of the test, the DEC asserted that respondent's medical diagnosis serves solely as a mitigating factor that should be considered when assessing the appropriate quantum of discipline, but does not serve as a reasonable explanation for her failure to cooperate.

In further support of this contention, the DEC noted that respondent engaged in the investigation of another ethics matter contemporaneously being investigated by the DEC. She provided a written response to that grievance and appeared for an in-person interview in connection with that matter, which moved forward to a complaint without the inclusion of a charge of failing to cooperate. According to the DEC, respondent's participation in the contemporaneous disciplinary matter is in "stark contrast" to her failure to cooperate in the instant matter.

The DEC further emphasized that, in addition to participating in one ethics

matter, respondent asserted that she was able to maintain her practice throughout this period of difficulty. In light of these facts, the DEC pointed to In re Coleman, ___ N.J. ___ (2019), where the attorney filed an MVD which included, as to prong one, the explanation that he was experiencing significant stress from emotional circumstances, including the death of his best friend. Coleman noted in his motion, however, that he continued to represent his clients “to the best of his abilities.” We determined Coleman’s personal stress insufficient to satisfy prong one and, thus, denied his MVD. We also noted that Coleman’s continued practice of law undercut his assertion that his personal stress prevented him from answering the complaint. (In the Matter of Kendal Coleman, DRB 18-218 (December 14, 2018) (Slip op. at 14)). The DEC argued that a similar analysis and result is warranted here.

Finally, the DEC asserted that respondent’s motion lacks any meritorious defenses and failed to address most of the allegations in the complaint or the various exhibits detailing her actual text-message exchanges with Svetlana. The DEC also asserted that respondent’s motion raised more issues and, in the event that the MVD is granted, the DEC reserved the right to amend the complaint accordingly.

Addressing the MVD first, respondent’s mental health issues, as

supported by the submission from her doctor, serve to satisfy the first prong of the test and appear to explain the abrupt turn that her career seems to have taken the last several years, which, in the past, we have questioned, considering her previous thirty-three years of otherwise good standing at the bar.

The DEC's reliance on Coleman in support of the contention that respondent's mental health issues do not satisfy the first prong of the test is misplaced. What the DEC omitted from its analysis is that, in Coleman, we also noted that the events creating the stress Coleman asserted as the reason for not answering the complaint occurred after his answer was due. In the Matter of Kendal Coleman, DRB 18-218 (slip op. at 14). Further, Coleman admitted that he did not file the answer because he wanted to avoid more stress. We categorized that as a choice. Id. Here, respondent has provided medical documentation of her diagnosis.

The arguments made by respondent regarding her meritorious defenses are, however, less compelling. Specifically, respondent argued that there is a much broader set of facts that would shed light on the entirety of this representation, and that credibility determinations are required when it comes to Svetlana's version of events. Respondent maintained that those determinations can only be achieved through a full hearing.

Respondent's argument that credibility determinations are critical to the adjudication of this matter does not constitute an actual defense to the allegations of misconduct. Moreover, this argument, as presented, addressed only the allegations regarding a lack of communication with the client. The DEC was correct in its assertion that respondent failed to address the alleged neglect, lack of diligence, or failure to communicate in other regards. More specifically, respondent failed to address the thrust of the allegations regarding her abject failure to complete an accounting, despite assuring the court and her adversary that she would. If respondent sought credibility determinations, she should have participated in the disciplinary process, as she has done in other cases.

Although respondent addressed the failure to cooperate allegations in the complaint, her defenses implicated the Jacob standard in that, she again asserted her recent diagnosis. In In re Jacob, 95 N.J. 132, 137 (1984), the Court held that, to successfully defend ethics charges based on a mental health condition, a respondent must prove a "loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional, and purposeful." Stated differently, to exculpate attorney misconduct, the evidence must show that a respondent was "out of touch with reality or

unable to appreciate the ethical quality of [her] acts.” In re Bock, 128 N.J. 270, 273 (1992); In re Trueger, 140 N.J. 103, 116-117 (1995).

The Court most recently addressed the Jacob standard in In re Cozzarelli, 225 N.J. 16, 21 (2016), a case where an attorney attempted to defeat a charge of knowing misappropriation of client and escrow funds. The Court restated the Jacob standard as follows:

The Jacob standard may not be a model of clarity, but the point to Jacob is that it expressed the Court’s willingness to consider defenses that would negate the mental state to act purposely. A mental illness that impairs the mind and deprives the attorney of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong, will serve as a defense to attorney misconduct. The aforesaid defenses are ones that can and should be considered in connection with excusing wrongful conduct by an attorney, or when mitigation of the disciplinary penalty is appropriate to consider under our disciplinary jurisprudence addressing the quantum of punishment.

[In re Cozzarelli, 225 N.J. at 31-32.]

In this case, however, it is difficult to consider whether respondent satisfied the Jacob standard because her MVD and supporting brief do not address whether respondent was out of touch with reality or unable to appreciate the ethical quality of her acts. Further, respondent admitted that some of her shortcomings in Svetlana’s matter were a result of how busy she was in other

matters. As set forth in the record, respondent's vacation schedule also played a part. Therefore, the record and respondent's own motion negate the Jacob standard by acknowledging that respondent was able to appreciate her actions and the need to meet deadlines. The DEC aptly stated that respondent's failure to cooperate in this matter is in stark contrast to her contemporaneous cooperation in another disciplinary matter.

Finally, although the DEC asserted that a verified answer is a required submission in connection with an MVD, pursuant to R. 1:20-4(e), we have, historically, never declined to grant an MVD for the lack of an answer. Typically, when an MVD is granted, a respondent is, thereafter, permitted to file a verified answer within a prescribed time.

Nevertheless, respondent's arguments as to the merits of her defense fail to satisfy the second prong of the test for granting an MVD. Accordingly, we determine to deny respondent's motion to vacate the default.

Having addressed respondent's MVD, we find that the facts recited in the formal ethics complaint support the charges of unethical conduct. Based on the following analysis, and considering the three-month suspension imposed in DRB 19-477, we determine to impose no additional discipline.

Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Despite having received the materials necessary to complete the accounting in accordance with the January 2018 settlement, respondent failed to do so. Further, because respondent failed to return Palitto's telephone calls for more than a month, he filed an enforcement motion, in March 2018, and only then did Svetlana learn that respondent was not performing her professional responsibilities. Nonetheless, respondent appeared in court, acknowledged that she was not qualified to perform the accounting, and assured the judge that she had retained a third-party professional to complete the required work.⁷ Although the judge granted respondent an additional thirty days to complete the accounting, respondent failed to do so. Upon a second motion to enforce the court's order, respondent failed to appear in behalf of her client, resulting in the appointment of Vitaliy as executor of the Estate. Respondent, thus, grossly neglected Svetlana's matter and lacked diligence, in violation of RPC 1.1(a) and RPC 1.3.

⁷ The complaint did not charge respondent with any RPC violations for her misrepresentations.

Further, respondent never informed Svetlana that she had failed to submit the accounting, that the court had set a final thirty-day deadline for it to be completed, or that she was not competent to do so. Thereafter, respondent again failed to inform Svetlana that she failed to prepare and submit the accounting; that a second motion had been filed; that a second hearing had taken place; or that Svetlana had been removed as executrix. Indeed, Svetlana learned of her removal as executrix three months later, via an e-mail from Vitaliy, the adverse party. Svetlana immediately sent respondent a text message demanding a telephone call. Respondent offered to meet with Svetlana but, although she sent several more text messages to respondent, Svetlana never heard from respondent again. Thus, respondent failed to communicate with Svetlana and failed to keep her informed about the status of her matter, in violation of RPC 1.4(b).

Finally, by failing to complete the accounting, which resulted in the filing of two enforcement motions, respondent improperly delayed the resolution of the Estate litigation and, thus, violated RPC 3.2.

Additionally, respondent ignored repeated requests from the investigator to submit a written reply to the grievance and to otherwise engage in the disciplinary process. Moreover, she failed to file an answer to the complaint. Respondent, thus, twice violated RPC 8.1(b).

Respondent arguably violated RPC 1.16(d) for failing to reply to Svetlana's subsequent counsel or to provide him with Svetlana's file, RPC 3.3(a)(1) (false statement of material fact or law to a tribunal) by making misrepresentations to the court, and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) by making misrepresentations to her client. Because the complaint did not charge respondent with having violated those Rules, however, we may not find such violations.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; and RPC 8.1(b) (two instances). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. See, e.g., In re Cataline, 219 N.J. 429 (2014) (attorney was guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); In re Rak, 203 N.J. 381 (2010) (attorney was guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter,

failed to communicate with the client, and failed to cooperate with disciplinary authorities); and In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand).

Admonitions have been imposed for failure to expedite litigation, even in the face of another violation. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (after the client had obtained the attorney to obtain a divorce as soon as possible, the attorney did nothing to pursue the matter and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.3; in another matter, they attorney violated the same RPCs; mitigating factors included the attorney's unblemished disciplinary history in more than twenty years at the time of the misconduct, in addition to the emotional, physical, and financial burden placed on her by the serious health problems of her spouse and his parents); In the Matter of Leonard B. Zucker, DRB 12-039 (April 23, 2012) (after the attorney had filed a foreclosure complaint against a California resident, the defendant retained a New Jersey attorney, who provided proof that the defendant was not

the proper party and requested the filing of a stipulation of dismissal; the attorney ignored the request, as well as all telephone calls and letters from the other attorney; only after the other attorney had filed an answer, a motion for summary judgment, and a grievance against him did he forward a stipulation of dismissal; this particular foreclosure matter had fallen through the cracks in the attorney's office due, in part, to the large number of foreclosure matters that the firm handled and the failure to direct the attorney's calls and letters to the staff members trained to handle the problems that arose therefrom; violations of RPC 3.2 and RPC 5.3(a); we considered that the attorney had an otherwise unblemished record of fifty-two years, was semi-retired at the time of the events, his firm's apology to the grievant and reimbursement of his legal fees, and the firm's institution of new procedures to avoid the recurrence of similar problems).

Although a reprimand is the baseline discipline for respondent's misconduct, to craft the appropriate discipline, we also must consider aggravating and mitigating factors. In aggravation, respondent caused serious harm to her client, who was removed as executrix of the Estate and was forced to retain subsequent counsel to try to correct the damage. Because the record does not reveal the resolution of the Estate litigation, the extent of the harm to

Svetlana is impossible to quantify. Nonetheless, Svetlana clearly was harmed, and that serves as a significant aggravating factor.

We also 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). This is respondent’s third default within the last year, and progressive discipline is an appropriate consideration.

To that end, a review of respondent’s disciplinary timeline is appropriate. In 2014, respondent received an admonition for her violation of RPC 1.3 and RPC 1.4(b) and (c). In that matter, she failed to act with diligence after her client’s complaint was dismissed and failed to return the client’s repeated telephone calls and e-mails for almost a year. Further, she failed to explain to the client problems with the client’s case, so that the client could make an informed decision regarding whether to proceed with the matter. In the Matter of Frances Ann Hartman, DRB 14-138 (July 22, 2014). The misconduct in that matter occurred during 2009 and 2010. In imposing an admonition, we considered that, prior to that complaint, respondent had a spotless record in her then, thirty-three years as a member of the bar.

On July 6, 2020, six years after receiving an admonition, respondent was censured, in a default matter, for violations of RPC 1.1(a); RPC 1.3; RPC 1.5(b); and RPC 8.1(b). In re Hartman, 243 N.J. 76 (2020). The misconduct in that matter occurred in late 2017 through April 2018, a date range that overlaps with the period of misconduct in the instant matter.

Most recently, on November 23, 2020, we determined to impose a three-month suspension on respondent for violating RPC 8.1(b) (two counts). The misconduct in that matter began with a February 2018 referral to the Office of Attorney Ethics, by the Clerk of the Court, for respondent's failure to maintain malpractice insurance while operating as a limited liability corporation. A formal ethics complaint was not filed until February 2019 and dealt only with respondent's failure to cooperate with the investigation of the Clerk's referral. In light of the default status of that matter, and respondent's demonstrated pattern of failing to cooperate in New Jersey's disciplinary process, despite her heightened awareness of her obligations as an attorney and the consequences that would follow, we determined to significantly enhance the quantum of discipline. That matter is pending with the Court.

In the instant matter, the misconduct occurred between January and September 2018. A review of respondent's three most recent disciplinary

matters shows that, in late 2017 and early 2018, she began experiencing some sort of personal or professional difficulty. She began neglecting client matters and ignoring client communications, and subsequently failed to meaningfully participate in the disciplinary process.

Although the discipline imposed in the previous matters was appropriate, we determine that additional discipline serves no purpose. The misconduct in this case took place in 2018, during the same period of her misconduct that resulted in a censure, and overlaps with the referral from the court for failure to maintain malpractice insurance. Further, the prior enhancement of discipline was premised primarily on respondent's repeated failure to participate in the disciplinary process. Here, however, due to the overlapping timeframe, it cannot be said that respondent is repeatedly thumbing her nose at the disciplinary system.

We have previously recommended no further discipline in default matters occurring in close succession, and the Court has agreed. See, e.g., In re Milara, 241 N.J. 27 (2020) (no additional discipline imposed on attorney where the misconduct at issue was similar to the misconduct in a previous matter and occurred during an overlapping period for which he received a one-year suspension; had the matters been considered together, no discipline greater

would have resulted); In re Isa, 239 N.J. 2 (2019) (no additional discipline imposed on attorney where the misconduct at issue pre-dated the unethical conduct for which he received a three-month suspension; had the matters been considered together, no discipline greater would have resulted); and In re Palfy, 236 N.J. 492 (2019) (no additional discipline imposed on attorney in two matters simultaneously before us – one by way of default – where the misconduct occurred close in time to the unethical conduct for which he previously received a three-year suspension; had all the matters been considered together, no discipline greater would have resulted).

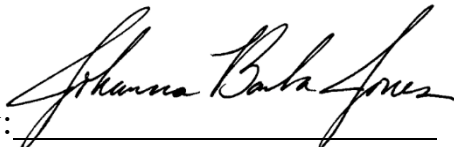
Chair Clark and Members Hoberman, Rivera, and Singer voted for no additional discipline, considering the three-month suspension imposed in DRB 19-477, with the condition that, within thirty days of the Court's Order in this matter, respondent provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE.

Member Joseph voted for a three-month suspension, consecutive to the three-month suspension imposed in DRB 19-477, with the same condition.

Vice-Chair Gallipoli and Members Petrou and Zmirich voted for a three-month suspension, concurrent to the three-month suspension imposed in DRB 19-477, with the same condition.

Member Boyer was recused.

Disciplinary Review Board
Bruce W. Clark, Chair

By: 

Johanna Barba Jones
Chief Counsel

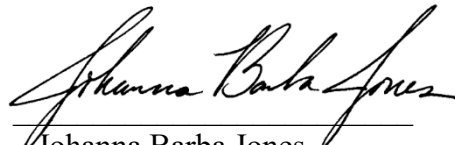
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frances Ann Hartman
Docket No. DRB 20-254

Decided: March 2, 2021

Disposition: No Additional Discipline

<i>Members</i>	No Additional Discipline	Three-Month Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X*		
Boyer			X	
Hoberman	X			
Joseph		X**		
Petrou		X*		
Rivera	X			
Singer	X			
Zmirich		X*		
Total:	4	4	1	0


 Johanna Barba Jones
 Chief Counsel

*Concurrent to decision in DRB 19-477.

**Consecutive to decision in DRB 19-477.