Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-147
District Docket No. VB-2018-0006E

In the Matter of	:
Lessie B. Hill	:
An Attorney at Law	:

Corrected Decision

Argued: October 15, 2020

Decided: May 20, 2021

Lucy B. Agostini appeared on behalf of the District VB Ethics Committee.

Linwood A. Jones waived appearance 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 reprimand filed by the District VB Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.3(a) and (b) (failure to supervise a nonlawyer employee); RPC 8.4(c) (conduct involving dishonesty, fraud,

deceit, or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 1976. At all relevant times, she maintained an office for the practice of law in Irvington, New Jersey.

In 1985, respondent received a private reprimand for her improper disbursement of a minor client's settlement funds.

This case arises from respondent's improper use of discovery documents received from an opposing party to generate new clients and to file a separate civil lawsuit, in a different venue, against the same opposing party, in violation of an existing protective order. Additionally, respondent was charged with failing to properly supervise her paralegal in connection with her law practice.

In 2011, Fiorella Rotondi purchased a vehicle from Dibre Auto Group, LLC, doing business as North Plainfield Nissan (Dibre), and was told that she could refinance the purchase of that vehicle at a later date. In March 2012, Rotondi returned to the dealership and refinanced the vehicle, through TD Bank. That refinancing transaction underpinned the subsequent litigation.

On May 30, 2013, respondent initiated a class-action complaint on behalf of Rotondi and other potential parties against Dibre, in the Superior Court of

New Jersey, Law Division, Union County. The litigation was not certified as a class-action case, but, rather, proceeded solely in respect of Rotondi, who alleged that she was a victim of consumer fraud, theft by deception, and breach of contract. Dibre, represented by Thomas Russomano, Esq., countered that a mistake had been made and that Dibre, thus, had no liability.

On September 19, 2014, prior to Dibre's retention of Russomano, respondent and attorneys for TD Bank had entered into a Discovery Confidentiality Order (the Protective Order), by consent. The Protective Order authorized the parties to unilaterally designate certain documents as "Confidential" or "Attorneys' Eyes Only." The Protective Order limited the use by the receiving party of the designated documents "solely for purposes of the prosecution or defense of this action," and not for any other purpose, unless and until such restrictions were removed either by written consent of the parties or by court order.

Subsequently, respondent sought discovery from Dibre regarding transactions that could have been similar to Rotondi's alleged experience. On March 31, 2015, Russomano provided to respondent what he characterized as responsive documents, subject to the Protective Order and marked "Attorneys' Eyes Only," identifying, among other customers, Tamika Jones and Kathryn J. Markowski. On May 11 and May 18, 2015, subsequent to Russomano's

production of those documents, respondent entered into contingent retainer agreements with Jones and Markowski.

On June 1, 2015, respondent filed a separate class-action complaint on behalf of Jones and Markowski and other potential parties against Dibre, this time in the Superior Court of New Jersey, Law Division, Essex County.[1] On July 13, 2015, Russomano, who also represented Dibre in that litigation, filed an answer to the complaint and, in accordance with R. 4:18-2, demanded a copy of all documents referred to in the complaint.

By letter dated August 11, 2015, respondent produced to Russomano the requested documents, some of which were the same documents that he previously had produced and marked "Attorneys' Eyes Only" pursuant to the Protective Order. The documents, however, had been altered, and did not include the "Attorneys' Eyes Only" designation; instead, respondent admitted that her paralegal, Lillian Allen, had "whited out" those designations. Thereafter, Russomano filed a motion, in the Rotondi matter, to enforce the terms of the Protective Order, to consolidate the cases, and to disqualify respondent as counsel.

[1] Respondent's explanation for filing the Jones/Markowski action in Essex County was inconsistent. During her testimony, she initially maintained that she was required to file in that venue, because Jones lived in Essex County, but later conceded that Markowski lived in Union County, where the Rotondi action already was venued.

On September 18, 2015, the Honorable James Hely, J.S.C. held a hearing in the matter, which addressed Dibre's motions. Judge Hely questioned respondent regarding Russomano's allegation that she had used documents produced in the Rotondi matter, which were subject to the Protective Order, to file a separate lawsuit in Essex County. He further asked her why the portion of those documents that designated them as for "Attorneys' Eyes Only" had been obscured. Judge Hely remarked that, pursuant to the terms of the Protective Order, respondent had no authority to contact Jones and Markowski without the prior consent of the defense or the approval of the court.

Respondent promptly admitted to the court that she had learned of Jones and Markowski from the documents that Russomano had produced pursuant to the Protective Order; however, she refuted the court's assertion that the Protective Order prohibited her from contacting these individuals. Respondent explained her belief that the Protective Order did not limit her from contacting these individuals as potential witnesses and asserted that, when she spoke to Jones and Markowski, she learned that their claims against Dibre were different from Rotondi's claims. After her explanation and further questioning, Judge Hely repeatedly stated that he was "troubled" and "concerned" by respondent's conduct and position.

On the same date as the hearing, Judge Hely issued an order authorizing Dibre to enforce the Protective Order, sealing the documents at issue, and authorizing Dibre to file a motion to consolidate the Rotondi and the Jones/Markowski matters.

On October 15, 2015, respondent submitted a certification to the court, again contending that she had not willfully disregarded the Protective Order, which she asserted neither prohibited her from contacting Dibre's customers with issues similar to Rotondi's claims nor Jones and Markowski as potential witnesses. Further, respondent asserted that she had contacted Jones and Markowski to discuss whether they had similar experiences as Rotondi and had learned, during those conversations, that their experiences were completely different. Further, she claimed that she had relied on information obtained from the New Jersey Motor Vehicle Commission's website, not the protected documents, to file the Jones and Markowski complaint, despite having conceded she had learned the parties' identities from the protected documents.

Respondent denied any knowledge that the documents submitted to Dibre had been "whited out." In her certification, she described Allen as a "skilled paralegal who was authorized to sign [her] name." Respondent further maintained that she trusted Allen with her clients' files, but that Allen had "made a mistake in whiting out the black spaces."

On the same date, Allen submitted a certification in which she claimed that, on August 15, 2020, while respondent was out of the office, she assisted on several clients' files. Specifically, she "took the initiative to respond to the Defendant's request in the Jones/Markowski matter." Because she "noticed that the documents had blacked out spaces," she "whited out" those spaces and sent the documents to Russomano.

Allen claimed that, at the time she responded to Russomano's letter in the Jones/Markowski matter, she was aware of neither the Protective Order, nor that she was causing a problem, because the documents "were being sent back to the same attorney that had initially sent them." She learned of the problem when she received Dibre's motion to enforce the Protective Order. Allen also certified that she was authorized to sign respondent's name on documents.

On October 23, 2015, Judge Hely issued a written opinion addressing several motions, including Dibre's enforcement motion. Judge Hely remarked that the Protective Order "made specifically clear that documents produced in discovery by the dealer pertaining to other transactions could not be disclosed to anyone outside of the Rotondi litigation, 'unless an order is obtained or the producing party gives consent to the disclosure.'" In this case, respondent received neither a court order nor consent. Judge Hely cited the language of the Protective Order that, "material produced and marked as attorney eyes only may

be disclosed only to outside counsel for the receiving party and to such other persons as counsel for the producing party agrees in advance or as ordered by the court." Judge Hely found that this was "not ambiguous language."

Judge Hely also found that, following Dibre's release of the documents, respondent filed a new lawsuit, in Essex County. Judge Hely referred to respondent's statement, during the September oral argument, acknowledging that she had learned the identities of Jones and Markowski from the documents obtained in the Rotondi litigation, but contending that she had not violated the Protective Order. Judge Hely found that respondent was "completely wrong about that" and that, if she had wanted to use these documents for another purpose, she was required to receive consent from her adversary, or apply to the court for such approval, but had done neither. Because the Protective Order was "clear," Judge Hely believed that respondent likely violated RPC 3.4(c), RPC 8.4(c), and RPC 8.4(d), and felt compelled to refer the matter to ethics authorities. In addition, he disqualified respondent from further representation of Rotondi in the pending litigation. On May 5, 2016, following respondent's appeal, the Appellate Division, in an unpublished decision, upheld Judge Hely's ruling, including the disqualification order.

At the ethics hearing, Russomano confirmed that, during the discovery process, respondent had sought Dibre transactional documents from preceding

years, and that those documents were designated "Attorneys' Eyes Only" and subject to the Protective Order. Russomano recounted that the Protective Order had been negotiated between respondent and TD Bank, prior to his involvement in the litigation. He confirmed that, after the release of those documents, respondent had not sought to lift any restrictions for documents designated as "Attorneys' Eyes Only." Further, respondent never told Russomano that she did not understand the Protective Order. To the contrary, Russomano testified that, during a deposition preceding her use of the protected documents in the Jones/Markowski litigation, respondent had attempted to use those documents; that he had objected; that he had explained to her (off the record) that her conduct was in violation of the Protective Order; and that respondent had ceased that line of inquiry.

According to Russomano, after respondent was disqualified from the Rotondi case, all the matters were consolidated and, in 2016, the Rotondi matter settled, for $5,000, and the Jones/Markowski matters were dismissed. He estimated he spent in excess of sixty hours working on the issues related to respondent's alleged violation of the Protective Order, at a rate of $400 to $450 per hour.

During respondent's testimony, she again admitted that she had executed the Protective Order with TD Bank but denied that there had been any

negotiation. Rather, she claimed that she "wanted to move the case along" after prolonged discovery delays and had simply accepted the document from her adversary. Respondent asserted that she had extensive experience in consumer fraud actions, which comprised a "significant part of her practice." She admitted that she had obtained the names of Jones and Markowski during discovery in the Rotondi matter, subject to the Protective Order, but maintained that she had prompted Russomano to redact personally identifying information from the discovery documents. She explained that, despite the terms of the Protective Order, she believed that she could contact Jones and Markowski as potential witnesses. Although respondent initially contacted Jones and Markowski as potential witnesses in connection with Rotondi's case, she realized that their cases were different, and that she would not be able to use them as witnesses. Respondent, however, admitted that she learned about both Jones and Markowski only after receiving and reviewing the documents marked as "Attorneys' Eyes Only." She also admitted that she had not approached her adversary or the court seeking relief from the Protective Order, because she believed it was not necessary.

Respondent testified that, in August 2015, she underwent surgery for colon cancer. Immediately following the surgery, she was bedridden and at home recuperating, for about nine days. Allen, whom respondent described as

her paralegal and friend, ran her office during that time. Respondent had survived colon cancer and two bouts of breast cancer but did not inform either the court or opposing counsel, because, in her words, she did not want Judge Hely, or anyone else, feeling sorry for her.

Respondent explained the procedures that she implemented to operate her office while she was recuperating at home. She authorized Allen to open and send to her home all mail received in the office. After respondent reviewed the documents, she directed Allen to take the appropriate action. Allen drafted outgoing letters, respondent reviewed them, and Allen was supposed to sign respondent's name, inserting a slash and including her own name.

Respondent denied that, during this time, Allen had sent respondent any documents from Russomano's office, and, therefore, denied that she knew about the document manipulation at issue. Respondent discovered what Allen had done after Russomano filed the motion to enforce the Protective Order; she was "livid," and confronted Allen. According to respondent, Allen had worked for her for approximately one year, and had no formal training as a paralegal.

According to respondent, Allen did not understand what the designation "Attorneys' Eyes Only," meant, and was not aware of the Protective Order. Once confronted, Allen explained to respondent that she had whited out the "Attorneys' Eyes Only." Allen did not understand the significance of this

designation and, because she was sending the documents back to the same attorney who originally had produced them, she did not anticipate any problems. Allen also claimed that her failure to include her signature beside respondent's was inadvertent, and she was only "trying to help out." Allen did not testify at the ethics hearing.

Respondent stated this was the first ethics complaint filed against her in over forty years of practice. She reiterated that she did not knowingly violate the Protective Order and that, in her many years of practice, she had never knowingly been dishonest or committed fraud.

The hearing panel found that there was no question that respondent learned of the identities of Jones and Markowski from documents obtained in the Rotondi case, and that these documents were marked as confidential, pursuant to the Protective Order. Further, the panel emphasized Russomano's testimony that respondent never contacted him to indicate that she was unclear about the terms of the Protective Order.

The panel, thus, determined that respondent failed to obey Judge Hely's Protective Order, in violation of RPC 3.4(c); that respondent failed to supervise Allen, her nonlawyer employee, in violation of RPC 5.3(a) and (b); that respondent "endorsed" the conduct of her subordinate, Allen, who removed the "Attorneys' Eyes Only" designation, and, based on a theory of vicarious

liability, respondent engaged in dishonesty and misrepresentation, in violation of RPC 8.4(c); and that respondent knowingly violated the terms of the Protective Order, thereby causing opposing counsel and the judiciary to spend significant time addressing the issue, in violation of RPC 8.4(d).

The panel concluded that a reprimand was the proper quantum of discipline, noting that it had not enhanced the quantum of discipline because it found respondent's violation of RPC 8.4(c) was based on her vicarious liability for the conduct of Allen, a subordinate.

In mitigation, the panel recognized respondent's illness and cancer treatment as an explanation for her absence during the week that she left Allen to run her office, and that this was the sole occurrence of such conduct in her over forty-year career. The panel recommended that respondent consider affiliation with another attorney or practice. The panel did not find any aggravating factors.

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

We find that the facts contained in the record clearly and convincingly support the finding that respondent violated RPC 3.4(c), RPC 5.3(a) and (b), and RPC 8.4(c). Specifically, respondent violated RPC 3.4(c) by knowingly

violating the very Protective Order that she had entered into by consent. Despite her arguments to the contrary, the language of the Protective Order is clear – she was obligated to limit the use of the documents and the information contained in them to her involvement in the Rotondi matter. If she sought to do otherwise, she was required to seek either the consent of the defense or court approval. Despite her status as a seasoned attorney, including in respect of consumer fraud actions, she failed to do so, and, thus, violated RPC 3.4(c) and RPC 8.4(c).

Respondent also violated RPC 5.3(a) and (b) by failing to adequately supervise Allen. It is clear from the record that respondent placed undue reliance on Allen, who had no formal training as a paralegal and had worked for respondent for only approximately one year. That improper reliance was taking place prior to respondent's colon cancer, when respondent allowed Allen to sign documents on her behalf, creating an environment where Allen felt empowered to substantively respond to Russomano's request in the Jones/Markowski matter, without asking respondent to review or authorize her work. As a result, Allen inexplicably deleted the "Attorneys' Eyes Only" designation on the confidential documents she sent to Russomano. This manipulation of documents went unnoticed by respondent because of her failure to adequately supervise Allen, until Russomano filed a motion to enforce the Protective Order and to disqualify respondent. Although respondent's medical issues obviously were

significant, they do not absolve her of the misconduct in failing to supervise a nonlawyer employee. Thus, respondent violated RPC 5.3(a) and (b).

Finally, respondent's violation of the Protective Order clearly was prejudicial to the administration of justice. Specifically, her actions caused a significant waste of both opposing counsel's time and the judicial resources of two vicinages. Russomano testified that he spent an estimated sixty hours performing work related to respondent's use of documents subject to the Protective Order. Judge Hely was required to hold hearings on the issue, and to issue an opinion disqualifying respondent from continuing to represent Rotondi, which respondent unsuccessfully appealed; the Appellate Division reviewed and upheld Judge Hely's opinion, including respondent's disqualification. These actions could have been avoided if respondent had sought the consent of the defense or the permission of the court to use these documents outside of the Rotondi matter. Based on the foregoing, respondent violated RPC 8.4(d).

We note that, although the hearing panel found that respondent was guilty of an RPC 8.4(c) violation based on a theory of vicarious liability in respect of Allen's conduct in removing the "attorneys' eyes only" designations from the documents, the complaint did not charge such a theory. Moreover, a violation of RPC 8.4(c) requires intent. Rather, the complaint alleged that respondent's violation of the Protective Order and subsequent filing of the Jones/Markowski

complaint was dishonest and violative of RPC 8.4(c). Despite the DEC's findings, the record is bereft of evidence that respondent ordered or ratified Allen's conduct. See RPC 5.3(c).[2] We, thus, reject such a theory of guilt for that second RPC 8.4(c) violation.

In sum, we find that respondent violated RPC 3.4(c), RPC 5.3(a) and (b), and RPC 8.4(c) and (d). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear in court when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3)

[2] RPC 5.3(c) enumerates three circumstances in which an attorney will be responsible for the actions of a nonlawyer assistant:

> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
> (1) the lawyer orders or ratifies the conduct involved;
> (2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or
> (3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

The record does not contain clear and convincing evidence of any of those three theories.

and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, his unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); and In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition).

Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a reprimand, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife, who stole client or third-party funds via thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); and In re Murray, 185 N.J. 340 (2005) (reprimand for attorney who failed to supervise nonlawyer employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to

maintain books and records that would have revealed the misuse of entrusted funds; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies).

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Ali, 231 N.J. 165 (reprimand case discussed above in connection with failure to obey court orders); In re D'Arienzo, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month

suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, and violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was

guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

Based on the foregoing precedent, especially the demonstrable impact of respondent's failure to obey the Protective Order on her adversary and the trial court, the baseline level of discipline for the totality of respondent's misconduct is a censure. However, to craft the appropriate discipline in this case, we must consider both mitigating and aggravating factors.

In mitigation, we consider that respondent has one remote instance of formal discipline – a 1985 private reprimand – in her more than forty-three-year career at the bar. Additionally, contemporaneous with her ethics lapse, respondent was undergoing cancer treatment and recovering from surgery. The only aggravation to consider is respondent's unwillingness to admit her misconduct, despite the clear provisions of the Protective Order.

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

Member Boyer voted to impose an admonition.

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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Lessie B. Hill
Docket No. DRB 20-147

Argued: October 15, 2020

Decided: May 20, 2021

Disposition: Reprimand

Members	Reprimand	Admonition
Clark	X	
Gallipoli	X	
Boyer		X
Hoberman	X	
Joseph	X	
Petrou	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel