

In re Hartman

Decided Nov 23, 2020

DRB 19-477

11-23-2020

In the Matter of Frances Ann Hartman An
Attorney at Law

Ellen A. Brodsky Chief Counsel

Bruce W. Clark, Chair

District Docket No. XIV-2018-0148E

Ellen A. Brodsky Chief Counsel

DECISION

Bruce W. Clark, Chair

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

This matter was before us on a certification of the
record filed by the Office of Attorney Ethics
(OAE), pursuant to *R. 1:20-4(f)*. The formal ethics
2 *2 complaint charged respondent with two
violations of *RPC 8.1(b)* (failure to cooperate with
disciplinary authorities).¹

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

For the reasons set forth below, we determine to
impose a three-month suspension.

Respondent was admitted to the New Jersey and
Pennsylvania bars in 1984, and to the Kansas bar
in 1987. At the relevant times, she maintained an
office for the practice of law in Moorestown, New
Jersey.

In 2014, respondent received an admonition for
her violations of *RPC 1.3* (lack of diligence) and
RPC 1.4(b) and (c) (failure to communicate with
the client). *In the Matter of Frances Ann Hartman*,
DRB 14-138 (July 22, 2014). In that matter,
respondent failed to act with diligence after her
client's lawsuit against another attorney for legal
malpractice was dismissed and, for almost a year,
respondent failed to return the client's repeated
telephone calls and emails. Further, she failed to
explain to the client issues that respondent
perceived as problematic, so that the client could
make an informed decision regarding whether to
proceed with the matter. In imposing an
3 admonition, we considered *3 that, prior to that
matter, respondent had a spotless record in thirty-
three years at the New Jersey the bar and, thus, her
conduct appeared to be aberrational.

On July 6, 2020, respondent received a censure, in
another default matter, for her violations of *RPC*
1.1(a) (gross neglect); *RPC 1.3*; *RPC 1.5(b)*
(failure to set forth in writing the basis or rate of
the legal fee); and *RPC 8.1(b)*. *In re Hartman*, 243
N.J. 76 (2020). In that matter, respondent accepted
the legal representation of a client in a pension
recoupment case, and then failed to perform any
work. Moreover, despite never having represented
the client, respondent failed to communicate to the
client, in writing, the basis or rate of the legal fee.
Finally, respondent violated *RPC 8.1(b)* by failing
to file an answer to the complaint. She also wholly
failed to cooperate with the district ethics
committee's investigation, but was not charged for
that misconduct.

Service of process was proper. On February 28, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to two known office addresses for respondent. The regular mailings were not returned. The certified mail receipts were returned, reflecting delivery dates of March 4 and 6, 2019, bearing the signature of "Joanne Bailey."

4 On March 25, 2019, the OAE sent a letter, by certified and regular mail, to respondent's office addresses, informing her that, unless she filed a verified *4 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 amended to charge a willful violation of *RPC* 8.1(b). A certified mail receipt for one of the addresses was returned, reflecting a delivery date of April 1, 2019, and bearing the signature of Joanne Bailey. The regular mail was not returned.

On March 25, 2019, respondent filed a nonconforming answer to the formal ethics complaint. By letter dated March 28, 2019, the OAE notified respondent that her answer failed to conform to the requirements of *R.* 1:20-4(e) and directed her to file an amended, conforming answer. The OAE sent this letter by certified and regular mail to the office address that respondent had provided in her nonconforming answer. Two certified mail receipts were returned for the same address, reflecting delivery dates of March 28 and April 1, 2019, and bearing the signatures of Joanne Bailey. The regular mail was not returned.

5 By letter dated April 25, 2019, the OAE sent yet another letter to respondent, by certified and regular mail, to her office addresses, informing her that, unless she filed a verified amended 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, *5 and the complaint would be amended to charge a willful

violation of *RPC* 8.1(b). The certified mail receipts were returned, reflecting delivery dates of April 29 and May 1, 2019, bearing the signature of Joanne Bailey. The regular mail was not returned.

On July 17, 2019, the District IIIB Ethics Committee (DEC) Hearing Panel Chair, Swati M. Kothari, held a prehearing conference, in which respondent and the OAE participated. The next day, Chair Kothari issued a letter memorializing the parties' conference, which included the parties' consent to move the matter from the prehearing stage to either a disciplinary stipulation or a motion for discipline by consent. The parties had agreed that, by July 29, 2019, respondent would file an amended, conforming answer, and would provide copies of certificates of malpractice insurance for the relevant periods charged in the complaint. Respondent, however, failed to file an amended answer or to provide copies of the certificates of malpractice insurance.

6 On August 5, 2019, the OAE sent a letter, by regular mail and e-mail, to respondent's office address, notifying respondent that she had failed to comply with the requirements outlined in Chair Kothari's letter. The regular mail was not returned, and the e-mail delivery receipt evidenced successful delivery to respondent. *6

By letter dated August 12, 2019, the OAE informed Chair Kothari that respondent had neither filed an amended answer nor provided proof of malpractice insurance; requested another prehearing conference; and provided notice of its intention to file a motion to strike respondent's answer. The OAE sent a copy of this letter to respondent, by regular mail and e-mail; the regular mail was not returned, and the e-mail delivery receipt evidenced successful delivery to respondent.

By e-mail dated August 26, 2019, Chair Kothari scheduled a prehearing conference for September 4, 2019. On August 27, 2019, respondent sent

what appeared to be an automated reply e-mail, representing that she would be out of the office until August 30, 2019.

On September 4, 2019, Chair Kothari held another prehearing conference, but respondent failed to participate. Respondent's staff represented to the OAE that respondent was in a trial at the time. Respondent, however, had not requested to reschedule the prehearing conference. Due to respondent's failure to comply with the requirements in Chair Kothari's letter, to which she had previously agreed, the OAE notified Chair Kothari of its intention to file a motion to suppress respondent's nonconforming answer. *7

On September 9, 2019, the OAE filed a motion for sanctions, with an affidavit in support, seeking to suppress respondent's answer, pursuant to *R. 1:20-5(c)*. The OAE served its letter, motion, and affidavit on respondent, by regular mail and e-mail. The regular mail was not returned, and the e-mail delivery receipt evidenced that the documents successfully were delivered to respondent.

By letter dated October 18, 2019, the OAE informed Chair Kothari that respondent had failed to reply to the motion by the required deadline, and requested that the Chair rule on its motion to suppress respondent's answer.

On November 26, 2019, Chair Kothari issued an order that suppressed respondent's nonconforming answer; prohibited respondent from raising any defenses; directed that the matter proceed as if respondent had not filed an answer; and authorized the OAE to certify the matter to us as a default, pursuant to *R. 1:20-4(f)*. Chair Kothari sent this order to respondent's office and e-mail addresses. On December 23, 2019, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

On February 26, 2018, the Clerk of the Supreme Court of New Jersey referred respondent to the OAE for investigation, following respondent's failure *8 to comply with the Clerk's request that

she provide a valid certificate of malpractice insurance.² On March 9, 2018, the OAE docketed the matter for investigation.

² *R. 1:21-1B(a)(4)* requires a limited liability company to maintain malpractice insurance. An attorney's failure to maintain malpractice insurance, when practicing as a limited liability company, is a violation of *RPC 5.5(a)* (unauthorized practice of law).

Thereafter, the OAE made numerous attempts to obtain a reply to the grievance from respondent. Specifically, by letters dated March 27 and April 12, 2018, the OAE informed respondent that an ethics grievance had been docketed against her and requested her written reply. Respondent failed to reply to the OAE's letters.

On April 25, 2018, the OAE left a message for respondent with the receptionist of her law firm, requesting that respondent contact the OAE and provide a written reply to the grievance.

On April 30, 2018, respondent asked the OAE for additional time to answer the grievance. By letter of the same date, the OAE confirmed the extension of time for respondent to answer the grievance. Respondent failed to reply. On June 4, 2018, the OAE granted respondent even more time to reply to the grievance; however, respondent again failed to reply. *9

On June 29, 2018, the OAE scheduled a demand interview of respondent, to take place on July 31, 2018, but respondent failed to appear for the interview. On multiple dates, the OAE investigator, Kyle Paul, attempted to contact respondent via telephone, but he was unable to reach her.

Thereafter, the OAE learned that the website for the law firm Cordry Hartman, LLC listed respondent as a principal of the firm. On February 4, 2019, the OAE sent a letter to respondent, by certified and regular mail, at Cordry Hartman, LLC's business address, enclosing its prior correspondence, and requesting an immediate

reply. The certified mail was delivered, and the regular mail was not returned; yet, respondent failed to reply.

On February 9, 2019, and on multiple occasions throughout February, Paul left voice messages for respondent with Cordry Hartman, LLC, but she failed to return his calls.

On February 28, 2019, the OAE filed the formal ethics complaint in this matter and, based on its multiple attempts to contact respondent, asserted that she willfully failed to cooperate with the OAE's investigation, in violation of *RPC* 8.1(b).

On March 25, 2019, respondent filed a nonconforming answer to the formal ethics complaint, admitting that the OAE had made multiple attempts to *10 contact her, and that she had failed to respond. However, she denied willfully failing to cooperate with the OAE's investigation, notwithstanding her knowledge of the OAE's attempts to contact her, and offered various personal and professional factors that caused her stress.

Thereafter, as detailed above, respondent's answer was stricken because she had failed to respond to the OAE's repeated requests that she file an amended, conforming answer. The OAE, thus, properly certified the record for our consideration.

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

On February 26, 2018, the Clerk of the Court referred respondent to the OAE for investigation, following her failure to comply with the Clerk's request that she provide a valid certificate of malpractice insurance. Throughout its investigation, the OAE made exhaustive attempts, through various means, to contact respondent regarding the Clerk's referral. Despite respondent's

initial interaction with the OAE and the DEC Chair, and multiple opportunities to adequately participate in the process, she subsequently failed to cooperate with *11 the ethics investigation and these disciplinary proceedings and failed to file a conforming answer to the complaint.

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

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 *12 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).

Pursuant to disciplinary precedent, the baseline level of discipline for respondent's misconduct is a reprimand. To craft the appropriate discipline, however, we also must consider aggravating and mitigating factors. In aggravation, we considered

respondent's demonstrated pattern of failing to cooperate with disciplinary authorities, and her heightened awareness that her conduct was under scrutiny, based on her disciplinary history. Specifically, respondent received a letter of admonition in 2014 and, during the same period the OAE was requesting information from respondent in this matter, the DEC filed a formal ethics complaint that she, ultimately, defaulted on as well. Although respondent's misconduct in this matter is dissimilar from her 2014 and recent misconduct, she has been on notice since 2014 that her conduct was under scrutiny. Respondent's second default, in this matter, and her heightened awareness that her conduct was under scrutiny, justify further enhancement from a censure to a three-month suspension. *See In re Furino*, 210 N.J. 124 (2012) (three-month suspension imposed, in a default matter, on an attorney who ignored a letter from the DEC and failed to submit a written
 13 reply to a grievance; *13 in aggravation, we considered that, at the time he received the grievance, he was "well aware that his inaction vis-à-vis the DEC in two prior disciplinary matters was under scrutiny," yet, "he continued to evade and avoid the system;" prior reprimand and three-month suspension).

In further aggravation, respondent defaulted in this matter, despite the OAE's exhaustive efforts and Chair Kothari's order. "A respondent's default or failure to cooperate with the investigative

authorities operates 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). There is no mitigation for us to consider.

In light of the default status of this 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 will follow, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Clark and Members Boyer and Rivera voted
 14 to impose a censure. *14

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
 15 provided in R. 1:20-17. *15

SUPREME COURT OF NEW JERSEY DISCIPLINARY REVIEW BOARD VOTING RECORD

Members Three-Month Suspension Censure
 Recused Did Not Participate Clark X Gallipoli X
 Boyer X Hoberman X Joseph X X Petrou X X
 Rivera X Singer X Zmirich X Total: 6 3