

and refusal to produce her financial records. Accordingly, the Committee finds that Respondent violated DR 2-103 and DR 3-102. See *In re Lajoy*, 279 A.D.2d 695, 719 N.Y.S.2d 719, 720 (3d Dep't 2001) (respondent violated DR 2-103 and 3-102 by acquiescing in an inmate's solicitation of other prisoners on respondent's behalf and sharing legal fees with inmate who helped prepare appellate briefs).

Charge Five alleges that, by charging and accepting excessive fees for her limited services, Respondent violated DR 2-106.

Even crediting Respondent's version of events, she charged Client Roe \$5,000 for acting as Roe's "legal advisor," a role which consisted of nothing more than lending her name to a pro se \$2255 Motion and entering a Notice of Appearance. The testimony provided by Clients A, B and C also indicates that Respondent charged substantial fees and did no work on their behalf, directing or allowing Inmate Doe to draft motions to be submitted pro se. By virtue of the foregoing, Respondent charged an excessive fee in violation of DR 2-106.

Charge Six alleges that, by directing or assisting Inmate Doe in preparing motions for her clients, Respondent aided a non-lawyer in the unauthorized practice of law, in violation of DR 3-101(A).

The evidence indicates that Inmate Doe prepared the \$2255 Motion for Client Doe with Respondent's knowledge and consent. Furthermore, she permitted her name to appear on the motion, accepted \$5,000 for services to be rendered in connection with it, and entered an appearance on Client Roe's behalf. By virtue of the foregoing, Respondent aided a non-lawyer (Inmate Doe) in the unauthorized practice of law. See *In re Abbott*, 167 A.D.2d 617, 620-21, 563 N.Y.S.2d 848, 850-51 (3d Dep't 1990) (attorney violated DR 3-101 by allowing a non-lawyer to perform legal work, including research and preparation of motions, on attorney's behalf); *In re Lajoy*, 279 A.D.2d at 695, 719 N.Y.S.2d at 720.

Charge Seven alleges that by virtue of withdrawing from her representation of Client Roe and failing to ensure that her actions would not prejudice her client, Respondent violated DR 2-110(A)(1) and (A)(2).

In her Affirmation, Respondent asserted that she sent a letter to Client Roe on September 3, 2008, informing him that she would no longer represent him. However, Client Roe denies that he received the September 3, 2008 Letter and the Special Mail log does not reflect it. Wholly apart from the issue of whether Respondent notified Client Roe of her intent to withdraw, she did not seek permission from the Court to withdraw her representation, nor did she withdraw her Notice of Appearance, and there is no evidence that Respondent made any effort to ensure that her actions would not prejudice her client. By virtue of the foregoing, Respondent violated DR 2-110(A)(1) and (2).

Charge Nine alleges that by virtue of her conduct, Respondent violated DR 1-102(A)(3), (A)(4) and (A)(5). DR 1-102(A)(3) prohibits a lawyer from engaging in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer. DR 1-102(A)(4) prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. DR 1-102(A)(5) prohibits conduct prejudicial to the administration of justice.

The record before this Committee, further reinforced by the adverse inferences, establishes violations of DR 1-102 by Respondent both with respect to her conduct vis a vis Client Roe and her conduct vis a vis this Committee.

First, with respect to Client Roe, Respondent accepted \$5,000 from Client Roe's family with the understanding that she would provide legal services to Client Roe in return. Instead, Respondent instructed or permitted Inmate Doe—a non-lawyer—to draft and file the \$2255 Motion. The Committee does not believe that Client Roe or his family would have paid \$5,000 to Respondent to secure the extraordinarily limited legal services described in the purported Retainer Agreement. The Committee finds that Client Roe reasonably believed he was retaining Respondent as his attorney in connection with the \$2255 Motion. See *In re Lajoy*, 279 A.D.2d at 695, 719 N.Y.S.2d at 720 (an attorney who paid a state inmate to help prepare appellate briefs in cases in which attorney was assigned or retained, shared legal fees with the inmate, and acquiesced in the inmate's solicitation of other prisoners was found to have violated, inter alia, DR 1-102(A)(4) and (5), and was suspended); *In re Kudisch*, 290 A.D.2d at 44, 733 N.Y.S.2d at 732 (an attorney who accepted retainer fee, conducted no work on client's behalf, and failed to reimburse unearned fee until after client complained to grievance committee violated DR 1-102(A)(4)).

Second, Respondent has been dishonest in her dealings with this Committee. In response to the initial Order to Show Cause, Respondent submitted an eight-page Affirmation pursuant to 28 U.S.C. §746. The facts established during the investigation indicate that Respondent misled the Committee in at least the following

respects:

(a) Respondent averred that the \$2255 Motion was not prepared at her direction or supervision and that she did not compensate Inmate Doe for preparing and filing it. The records received from Federal Prison X indicate that Respondent visited Inmate Doe on numerous occasions, spoke to Inmate Doe on a regular basis, and that Inmate Doe received 14 separate payments from Respondent or her brother totaling \$5,450. The Committee finds that at least some of these visits and telephone calls concerned the provision of legal services by Doe to Client Roe, and that at least some of these payments were to compensate Inmate Doe for obtaining Client Roe as a client and drafting and filing the \$2255 Motion for him.

(b) Respondent provided this Committee with a Retainer Agreement bearing what purports to be Client Roe's signature. Respondent claims that that she sent the Retainer Agreement to Client Roe and received an executed copy from him by mail. However, Respondent has refused to testify under oath and has refused to produce the original Retainer Agreement, permitting an adverse inference. A retainer agreement is a record that must be kept pursuant to DR 9-102. Client Roe denies having seen or signed the Agreement, the Retainer Agreement is not signed in the manner Client Roe usually executes documents, and the records produced by Federal Prison X do not reflect that it was sent to Client Roe as "Special Mail." The Committee therefore finds that the Retainer Agreement was created after the fact to justify the limited legal services Respondent provided Client Roe. *In re Boter*, 46 A.D.3d at 5-7, 842 N.Y.S.2d at 418-420 (disbarring attorney whose conduct included causing employees to forge client's signature and filing falsified retainer agreements with the Office of Court Administration, in violation of, inter alia, DR 1-102(A)(3) and (4)).

(c) Respondent described various conditions and the like that purportedly justify her failure to communicate with Client Roe's family members who tried to reach her during this period. However, during the same period she was allegedly incapacitated, Respondent visited Inmate Doe (which required travel from New York) at least three times and spoke to Doe on a regular basis.

Respondent was given the opportunity to refute Client Roe's complaint, to provide evidence in support of her assertions, and to offer an explanation for the series of payments totaling \$5,450 to Inmate Doe, but chose not to do so. In this civil matter, the Committee may infer that truthful answers to questions about her representation of Client Roe and her relationship with Inmate Doe would have been incriminating. In light of the uncontested evidence, and the adverse inference we draw, we are left to credit the evidence indicating that Respondent was not truthful in the Affirmation she submitted to this Court. See *In re Abbott*, 167 A.D.2d at 621, 563 N.Y.S.2d at 851 (attorney who attempted to mislead or deceive the disciplinary committee violated DR 1-102(A)(4) and (5)).

Third, Respondent has failed to cooperate with this Committee's investigation and has engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5). Under New York law, an attorney respondent has a duty to cooperate with an investigation into allegations of misconduct. *In re Lynch*, 115 A.D.2d 70, 71-72, 499 N.Y.S.2d 735, 736 (1st Dep't 1986); *In re Boter*, 46 A.D.3d at 8, 842 N.Y.S.2d at 420 (respondent's failure to cooperate with committee's investigation resulted in interim suspension); *In re Coughlin*, 95 A.D.2d 64, 65, 465 N.Y.S.2d 180, 181 (1st Dep't 1983) (finding respondent's failure to cooperate with petitioner a violation of DR 1-102(A)(5)). A similar duty applies in an investigation by this Committee.

During the course of the Committee's investigation, Respondent has exhibited conduct that we deem to have been dilatory by design. This Court issued two subpoenas duces tecum to Respondent: one to Respondent in her individual capacity, and the other to her business entity, Saghir & Associates. After being granted extensions of time to respond to each subpoena, Respondent produced no documents. Respondent's failure to provide Investigating Counsel with the requested Retainer Agreement and bank records, required to be maintained under the Code, violates not only DR 1-102 (conduct prejudicial to the administration of justice), but also constitutes an independent violation of DR 9-102(l) (failing to produce documents required to be maintained under DR 9-102 in response to a subpoena issued in a disciplinary investigation). See *In re Marcin*, 274 A.D.2d 199, 201, 711 N.Y.S.2d 818, 819 (4th Dep't 2000).

Moreover, based on her assertion that she needed time to obtain an affidavit from Inmate Doe, Respondent was granted an extension of time until September 10, 2009 to respond to the Statement of Charges filed against her, and was told that no further extensions would be given. On September 10, 2009, Respondent stated that she could not set forth her defense without an affidavit from Inmate Doe, was not able to obtain such an affidavit in light

of the subpoena served on him, and requested an extension of time until after Doe's deposition. Given the close relationship that apparently exists between Respondent and Inmate Doe, the Committee is skeptical of Respondent's claim that she cannot obtain an affidavit from Inmate Doe. Of greater significance, Respondent has failed to offer any reason—and we can think of none—that a statement from Inmate Doe would be essential to her defense.

By virtue of the foregoing, Respondent has engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5). See *In re Deluca*, 230 A.D.2d 234, 235, 655 N.Y.S.2d 516, 517 (1st Dep't 1997) (by failing to submit answers to inquiries concerning the complaints filed against him and failing to provide materials pursuant to subpoena, respondent "thwarted the Committee's investigation... and engaged in conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(5)"); *In re Pikna*, 101 A.D.2d 588, 589, 476 N.Y.S.2d 140, 141 (1st Dep't 1984) (suspending respondent who failed to comply with subpoena for records without any justification, asserted his privilege against self incrimination at his deposition, and was deemed to have "will full[ly] and deliberate[ly]" failed to cooperate in violation of 22 NYCRR 603.15(e)).

Accordingly, for the reasons set forth above, the Clerk of the Court is directed to immediately strike Respondent's name from the roll of attorneys admitted to practice before this Court.

1. The Committee also issued a Subpoena Duces Tecum, dated August 11, 2009, to Saghir & Associates, PLLC ("Saghir & Associates"), an entity through which Respondent conducts her legal practice, directing it to produce responsive documents on or before August 25, 2009. Upon Respondent's request, Saghir & Associates' time to produce responsive documents was extended until September 10, 2009. Saghir & Associates did not produce documents on September 10 or on any later date, nor did it provide any explanation for its failure to do so.

2. Investigating Counsel also sought documents and deposition testimony from Inmate Doe. By Subpoena Duces Tecum and Ad Testificandum dated July 21, 2009, the Committee directed Inmate Doe to produce documents and appear for testimony on August 26, 2009. By letter dated August 6, 2009, Inmate Doe moved the Committee to quash the Subpoena on various grounds. By letter dated August 17, 2009, Inmate Doe also moved the Committee to postpone the appearance for which he had been subpoenaed and for other ancillary relief. By Order dated August 21, 2009, the Committee denied both motions. Inmate Doe did not appear on August 26, stating that he was not feeling well. By letter dated August 27, 2009, Doe informed the Committee that no documents responsive to the subpoena were in his possession, custody, or control.

Investigating Counsel obtained the telephone records and visitor log from the federal prison where Doe was held just prior to his scheduled deposition ("Federal Prison Y"). The records show that Respondent visited Doe at Federal Prison Y five times during the week prior to Doe's scheduled deposition.

In view of Respondent's decision not to make a submission in response to the Statement of Charges, Investigating Counsel determined that Inmate Doe's deposition was not necessary.

3. Local Rule 1.5(b)(3) of the Southern and Eastern Districts of New York provides, inter alia, that discipline may be imposed where an attorney of this Court resigns from the bar of another federal court while an investigation into allegations of misconduct is pending. Accordingly, even if this Committee had no independent ground for imposing discipline, it could discipline Respondent solely on the basis of her resignation from the bar of the Eastern District.

4. The Retainer Agreement provides that Respondent would charge a "flat fee" of \$15,000, and that "[a]n initial retainer of \$5,000 is due immediately and the sum of \$10,000 will be due once the reply is filed in this matter." The Agreement further provides: "As per your instructions, you will file your \$2255 motion pro se (which we have seen a copy of) we will only docket our appearance and proceed in the above matter after the government has filed a reply to your pro se motion and act only as your advisors until that point."

5. "Federal Imprisonment Reduction Experts" or "F.I.R.E." is a company that was operated by Respondent's brother, Faizan Saghir. The Affirmation of Faizan Saghir (attached as an exhibit to the Saghir Affirmation) states that he and other family members (but not Respondent) founded F.I.R.E, and operated it as a legal research organization from early 2007 until the beginning of May 2007. Faizan Saghir's Affirmation explains that he created the F.I.R.E flyer and, through searches on the Federal Bureau of Prisons website for common names such as "Jack Smith" or "Jose Gomez," sent it to inmates in prisons throughout the United States. The Affirmation further states that F.I.R.E. received a call from an individual whose brother was an inmate at Federal Prison X, and referred that individual to Respondent, but that Respondent was not associated with F.I.R.E. at any time. Notably, in April 2007, both Respondent and F.I.R.E. operated out of the same building at 111 Livingston Street in Brooklyn.

6. Client Roe provided a copy of the receipt, and Respondent acknowledges that she issued it.

7. On September 27, 2007, Respondent sought leave to visit Inmate Doe on short notice as a result of a brief due in his case the following Monday. An examination of the docket sheet reveals no brief that was scheduled to be filed or that was filed on or about that date.

8. Investigating Counsel learned of at least one occasion in which Respondent improperly used the Special Mail system to transmit personal mail to Inmate Doe. Federal Prison X intercepted an envelope marked Legal Mail that had been sent to Doe by Respondent but contained a personal letter to Inmate Doe from an inmate at another prison. Based upon a review of Respondent's active cases, Investigating Counsel determined that the inmate writing to Doe was also Respondent's client.

9. Investigating Counsel learned from Federal Prison X that the Call Reports are created as part of regular prison procedures by prison employees, some of whom have been hired for the specific purpose of monitoring calls and entering notes. The notes contained in the Call Reports are regularly reviewed and relied upon for their accuracy by various departments within the prison as a tool for gathering intelligence, identifying nefarious activity, and ensuring internal security.

10. On April 1, 2009, New York Courts replaced the Code with the New York Rules of Professional Conduct. The Committee reaches its decision applying the rules in effect as of Respondent's conduct, but notes that the disciplinary rules cited herein are fully consistent with the newly-adopted Rules in all respects here relevant.

11. Respondent asserts in her Affirmation that she spoke to members of Client Roe's family on a number of occasions—including during the time that she was working from home. She further stated that she had not been aware that either Client Roe or any of his friends of family had otherwise been attempting to contact her. The Committee puts no weight on these assertions given the adverse inferences arising from Respondent's refusal to testify, her failure

to produce her correspondence and other files pertaining to Client Roe, and her lack of candor in other respects.