

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 13-304  
District Docket No. XII-2013-0009E

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IN THE MATTER OF  
BARBARA KIRSCH EINHORN  
AN ATTORNEY AT LAW

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Decision

Decided: February 26, 2014

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

This matter came before us on a certification of default filed by the District XII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with failure to act with reasonable diligence, a violation of RPC 1.3; failure to communicate with her client, a violation of RPC 1.4(a); and failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b). We determine that a censure is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1985. At the relevant times, she maintained offices for the practice of

law in Watchung, New Jersey. She has no disciplinary history.

Service of process was proper in this matter. On June 19, 2013, the DEC sent a copy of the formal ethics complaint to respondent's office address, by regular and certified mail. The certified mail receipt was returned with an illegible signature. The regular mail was not returned.

On August 21, 2013, the DEC sent a letter to respondent's office address, by regular mail and certified mail, advising her that she had five days to file her answer or the matter would be certified to us for the imposition of sanction. Respondent signed and returned the certified mail receipt on August 23, 2013. The regular mail was not returned.

As of August 30, 2013, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified the record to us.

On December 4, 2013, respondent wrote to Office of Board Counsel (the OBC), requesting two weeks to file a motion to set aside the default. In her letter, respondent claimed that "I did not receive a copy of the Complaint and only found out about it through another attorney . . ."<sup>1</sup> The OBC then gave respondent ten days to file the motion. To date, neither has respondent

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<sup>1</sup> As indicated above, on August 23, 2013, respondent herself signed the certified mail receipt for the DEC's "five-day letter" of August 21, 2013.

filed motion papers nor have there been any further communications from her.

The facts of this matter are as follows:

In April 2011, respondent was retained by Robin T. Lewis to represent her in obtaining a Retirement Benefits Court Order for her deceased husband's Thrift Savings Plan, as well as a Civil Service Retirement System Court Order (collectively QDROs). Lewis paid respondent \$750 to obtain the necessary QDROs.

Respondent failed to pursue the QDROs for Lewis, despite Lewis' repeated requests that she do so. In November 2011, respondent advised Lewis that she had paid All Pro QDRO, LLC ("All Pro") to prepare the QDROs, but provided no proof of the filing and did not arrange for the filing at that time.

In August 2012, respondent again told Lewis that she paid All Pro to prepare the necessary documents for the QDROs. Nevertheless, there is no evidence that the QDROs were ever filed. Despite Lewis' repeated requests to respondent for information about the case, Lewis has not received the QDROs and had to retain the services of new counsel to represent her. Lewis has not heard from respondent since December 2012.

On February 8, 2013, the DEC docketed a grievance against respondent. On February 13, 2013, the DEC investigator sent a copy of the grievance to respondent, requesting a reply within ten days of the letter. Respondent did not file a reply to the

grievance.

On March 11, 2013, the DEC sent a follow-up letter to respondent, requesting a reply within five days of the letter and warning her that she could be charged with failure to cooperate with the disciplinary investigation. Respondent never filed a reply to the grievance.

The facts recited in the complaint support the charges of failure to act with reasonable diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. Respondent's failure to file an answer 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)).

Conduct involving lack of diligence and failure to communicate with the client generally will result in an admonition. See, e.g., In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney filed an appearance in his client's federal civil rights action and chancery foreclosure matter and had a pending motion in the federal matter adjourned; he was unable to demonstrate what work he had done on his client's behalf, who had paid him \$10,000; he also failed to communicate with his client and failed to reply to the disciplinary investigator's requests for information about the grievance); In re Russell, 201 N.J. 409 (2009) (attorney failed

to file answers to divorce complaints against her client, causing a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); and In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney's inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the client about the status of the case).

Here, the matter involves one client, the offenses, although professionally disappointing, are minor, the client appears to have suffered little harm, other than lost time and obvious frustration, and respondent has no disciplinary history. Normally, respondent's lack of diligence and failure to communicate would result in an admonition.

Respondent, however, also failed to cooperate with disciplinary authorities by not replying to the grievance and not filing an answer to the formal ethics complaint, violations of RPC 8.1(b). In a default matter, the otherwise appropriate discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342 (2008). Therefore, the otherwise appropriate discipline for respondent's lack of diligence and failure to communicate with grievant, an admonition, would normally be

enhanced to a reprimand.

But there is another aggravating factor to consider. Respondent misrepresented to the OBC that she had no notice of the complaint. In her letter, she stated that she had heard about it through another attorney. Contrarily, the record contains a certified mail receipt bearing her signature for the receipt of the DEC's "five-day letter." Because of this misrepresentation, the quantum of discipline should be further enhanced to a censure. We so determine.

Member Doremus did not participate.

We further determine to require respondent to reimburse the Discipline 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  
Bonnie C. Frost, Chair

By:   
Isabel Frank  
Acting Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Barbara Kirsch Einhorn  
Docket No. DRB 13-304

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Decided: February 26, 2014

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli			X			
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			8			1

  
Isabel Frank  
Acting Chief Counsel