

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 14-079,
DRB 14-080, and DRB 14-081
District Docket Nos. VII-2013-
0014E, VII-2013-0015E, and VII-
2013-0031E

IN THE MATTERS OF

MARIA A. YELLAND A.K.A.

MARIA A. YELLAND-YOUNG

AN ATTORNEY AT LAW

Decision

Decided: July 24, 2014

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

These matters were before us on certifications of the record filed by the District VII Ethics Committee (DEC), pursuant to R. 1:20-4(f). In the matter under DRB 14-079, respondent was charged with violating RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to enable the client to make informed decisions about the representation), RPC 1.16(d) (failure to protect a client's interests on termination of the representation), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). In DRB 14-080, respondent was charged with violating RPC 1.4(b)

(failure to keep a client reasonably informed about the status of a matter); RPC 1.16(d), and RPC 8.1(b). In DRB 14-081, respondent was charged with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), and RPC 8.1(b).¹

We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1994. She has no history of discipline.

Service of process was proper in these matters. In District Docket Nos. VII-2013-0014E and VII-2013-0015E, on November 11, 2013, the DEC secretary forwarded a copy of the complaints, by certified and regular mail, to respondent's business address, Surety Title Company, 1 Union Street, Suite 202, Robbinsville, New Jersey 08691. In District Docket No. VII-2013-0031E, the DEC Secretary sent the complaint, on November 6, 2013, by certified and regular mail, to respondent's business address. The regular mail was not returned to the DEC. The record contains three certified mail receipts signed by a "D Bernardo." Respondent did not file an answer to any of the complaints within the prescribed time.

¹ Although no subsection of RPC 1.4 was cited, the language in the complaint makes clear that (b) was intended.

On February 20, 2014, the DEC secretary sent a letter to respondent, advising her that, unless she filed an answer to all three complaints by March 7, 2014, the allegations of the complaint would be deemed admitted and the records would be certified to us for the imposition of discipline. The letter also served to amend the complaints to charge respondent with violating RPC 8.1(b), based on her failure to file an answer to the complaint. The letter was sent to respondent's business address by certified and regular mail. The record contains three certified mail receipts bearing an illegible signature. The regular mail was not returned to the DEC. Respondent did not file an answer to any of the complaints.

DRB 14-079 (DISTRICT DOCKET NO. VII-2013-0014E)

The facts that gave rise to this matter are as follows:

In 2010, Susan Eileen Cove retained respondent to represent her in connection with a bankruptcy proceeding. The bankruptcy was discharged in November 2010. In connection with the bankruptcy, Cove provided respondent with various documents. For over a year, Cove made telephone calls and sent letters to respondent, seeking the return of her documents. On at least one occasion, respondent advised Cove that her documents were forthcoming. Respondent did not return Cove's documents. Cove

then obtained the services of another attorney to help her retrieve her file from respondent, to no avail.

The DEC secretary sent two letters to respondent, on February 19 and March 5, 2013, seeking her reply to the allegations in Cove's grievance. Respondent failed to reply. The DEC investigator also sent two letters to respondent, on April 5 and June 14, 2013, seeking a reply to the allegations. Respondent did not reply.

The complaint charged respondent with violating RPC 1.4(c), RPC 1.16(d), and RPC 8.1(b).²

DRB 14-080 (DISTRICT DOCKET NO. VII-2013-0015E)

The facts are as follows:

In or about January 2013, Patricia Casalino retained respondent to represent her and her sister in the administration of their mother's estate. Specifically, respondent was to represent them and the estate in the sale of the deceased's condominium and to file an inheritance tax return. Casalino paid respondent a \$2,000 retainer. Casalino also gave respondent a check for \$21,393.86 to pay the inheritance tax,

² The language in the paragraph charging respondent with violating RPC 1.4(c) refers to respondent's failure to return phone calls and to turn over the file, conduct that would more appropriately implicate RPC 1.4(b) and RPC 1.16(d). RPC 1.4(c) does not apply to these facts. See discussion, infra, at 10-11.

months before the payment was due. Respondent, however, failed to timely make the payment. As a result, the estate incurred a \$1,988 penalty.

Casalino made numerous phone calls to respondent, left messages, and visited her office, to no avail. Respondent failed to keep Casalino informed about the status of her matter.

At the time of the sale of the condominium, Casalino attempted to contact respondent to see if she could represent Casalino and the estate, at the closing. Respondent again failed to return Casalino's calls or to otherwise communicate with her. As a result, Casalino had to hire another attorney to "assist" with the closing, at a cost of \$2,000. Casalino's new attorney had to redraft the inheritance tax return, revise the paperwork to complete the sale of the condominium, and complete the administration of the estate. Casalino had already paid respondent to complete those services. Between the retainer paid to substitute counsel and the penalty imposed on the estate, Casalino incurred expenses of almost \$4,000, as a result of respondent's misconduct.

By letters dated February 19 and March 5, 2013, the DEC secretary requested that respondent reply to the allegations in Casalino's grievance. Respondent failed to reply. By telephone call on April 2, 2013 and by letters dated April 5 and June 14,

2013 the DEC investigator, too, asked respondent to reply to Casalino's grievance. Respondent did not do so.

The complaint charged respondent with violating RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b).³ As to the latter, the complaint charged that, "[b]y reason of the foregoing conduct as set forth in this Complaint, the Respondent violated RPC 8.1(b) by failing to respond to the lawful demands of the District VII Ethics Committee for information."

DRB 14-081 (DISTRICT DOCKET NO. VII-2013-0031E)

The facts are as follows:

In June 2012, Bernadette Clark retained respondent to file a bankruptcy petition on her behalf. Respondent asked for a \$1,306 flat fee to file the petition. Clark, who was then unemployed, agreed to make installment payments. Upon full payment of the fee, respondent would file the petition.

Between June 2012 and September 2012, Clark made installment payments to respondent, by way of personal checks totaling \$425. Respondent either deposited or cashed the checks.

³ It is not apparent why respondent was not charged with gross neglect or lack of diligence.

In early November 2012, Clark advised respondent that she would likely be receiving a job offer. Respondent advised Clark that it was beneficial to file the bankruptcy petition, prior to beginning her employment. Based on Clark's conversation with respondent, Clark believed that respondent would immediately file the petition on her behalf and that Clark would continue to make installment payments until the quoted fee was paid in full.

Thereafter, in December 2012, Clark made two payments to respondent, totaling \$300, both of which respondent either deposited or cashed. Between January and March 2013, Clark made three additional payments to respondent, in what she believed to be full satisfaction of respondent's fee for filing the bankruptcy petition.

Beginning in March 2013, Clark made several attempts to contact respondent, after she had not heard from her for several months. Respondent's final communication with Clark took place in November 2012.

In May 2013, Clark contacted the bankruptcy court to determine whether respondent had filed her petition. She discovered that she had not. In June 2013, Clark instructed her bank to stop payment on the last three checks that she had given to respondent, which had not yet been deposited or cashed.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.1(b).

* * *

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). The facts recited in the complaint support the charges of unethical conduct, with one exception.

As noted above, in the Cove matter, there are no facts in the complaint that support a finding that respondent violated RPC 1.4(c). There is no indication that the client had to make decisions about the subject of the representation and that she was unable to do so because of respondent's failure to explain the matter to her, in detail. In fact, the language in the relevant paragraph implicates RPC 1.4(b), which is also not supported by the allegations. We, thus, dismiss the charged violation of RPC 1.4(c).

Altogether, respondent is guilty of gross neglect and lack of diligence in the Clark matter, failure to communicate in the Casalino and Clark matters, failure to protect a client's interests on termination of the representation in the Cove matter (return of the file) and the Casalino matter (return of the unearned portion of the retainer), and failure to cooperate with disciplinary authorities in all three matters, violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b).

Conduct similar to respondent's ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012) (attorney admonished for failure to reply to his client's numerous telephone calls and letters over an eleven-month period and for lack of diligence in handling the client's matter); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (admonition for attorney who filed an appearance in his client's federal civil rights action and chancery foreclosure matter; was unable to demonstrate what work he had done on his client's behalf, who had paid him \$10,000; 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) (admonition for attorney whose failure to file answers to divorce complaints against her client caused 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); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition imposed on attorney whose 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 failed to communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including

gross neglect, lack of diligence, and failure to communicate with clients).

None of the above cases involved three client matters, with the exception of Wildstein, which led to a reprimand. We find that respondent's conduct, too, is deserving of a reprimand.

There is, however, one more factor to consider. Respondent failed to cooperate with the DEC's investigation of the grievances and allowed this case to proceed on a default basis. "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). Thus, the otherwise appropriate measure of discipline, a reprimand, must be enhanced to a censure.

In addition, respondent is required to return all fee payments that Clark made to her. The complaint makes it clear that, despite those installment payments, respondent performed no legal services on Clark's behalf.⁴

⁴ We do not require respondent to refund the fee in Cove and Casalino only because the Cove complaint does not indicate whether Cove paid a fee to respondent and because the Casalino complaint suggests that respondent performed some services on Casalino's behalf. When an attorney does some legal work for the client, the question of how much the client is entitled to be refunded should, more properly, be addressed by a fee arbitration committee.

Vice-chair Baugh did not participate and Member Rivera abstained.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Maria A. Yelland
Docket No. DRB 14-079, DRB 14-080 and DRB 14-081

Decided: July 24, 2014

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Abstained	Did not participate
Frost			X			
Baugh						X
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera					X	
Singer			X			
Yamner			X			
Zmirich			X			
Total:			7		1	1


Ellen A. Brodsky
Chief Counsel