

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-137  
District Docket No. XIV-2012-0076E

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IN THE MATTER OF  
CINZIA CIOFFI  
AN ATTORNEY AT LAW

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Decision

Decided: October 22, 2012

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). A two-count complaint charged respondent with violations of RPC 1.16(a)(2) (failure to withdraw from representation), RPC 1.16(d) (failure to protect client's interests upon termination of the representation), RPC 8.1(b) (failure to cooperate with an ethics investigation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001. She has no prior discipline.

Service of process was proper in this matter. According to an April 18, 2012 supplemental certification of service from the OAE, on March 8, 2012, Disciplinary Auditor Gary Stroz personally hand-delivered to respondent, at 89 Stillwells Corner Road, Freehold, New Jersey 07728, a copy of the November 3, 2011 complaint, along with the OAE's November 9, 2011 complaint service letter and that office's December 9, 2011 letter to respondent regarding her failure to file an answer.<sup>1</sup>

On April 2, 2012, the OAE sent a "five-day letter" to respondent advising her that the twenty-one days to file an answer had expired and that, unless she filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of discipline. The complaint would be deemed amended to include a violation of RPC 8.1(b). The letter was sent to the Stillwells

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<sup>1</sup> This matter was previously docketed as a default, under DRB 11-460, but was administratively dismissed, by letter dated February 6, 2012, for deficient service of process.

Corner Road address, by regular mail and certified mail, return receipt requested.

On April 3, 2012, the United States Postal Service left a notice at the Stillwells Crossing Road address, for respondent to claim the certified mail envelope, but the envelope was never claimed. The regular mail envelope was not returned.

Respondent did not file an answer or otherwise contact the OAE.

According to count one of the complaint, on December 7, 2010, Donna Legband, Esq., called the OAE regarding her inability to reach respondent, her adversary in a matrimonial matter for which there had been a trial date scheduled for the previous day, December 6, 2010.

Prior to that, on November 18, 2010, respondent had hastily canceled a meeting with Legband scheduled for later that day, advising Legband that she "was not feeling well" and would reschedule the meeting.

Just three days prior to trial, on December 3, 2010, respondent contacted the trial court judge, the Honorable Catherine Fitzpatrick, J.S.C., to advise the court that she was

ill and that she needed an adjournment of the December 6, 2010 trial date.<sup>2</sup>

Judge Fitzpatrick granted respondent's adjournment request, but required her to contact Legband, during the week of December 6, 2010. Legband received no communication from respondent, who also failed to reply to Legband's independent efforts to contact her to discuss the matter.

Due to respondent's "actions or inaction," Judge Fitzpatrick "released" her from the representation to allow her client to retain new counsel. Thereafter, upon termination of the representation, respondent took no action to protect her client's interests, presumably to include such actions as returning the client file or turning it over to subsequent counsel, for which we find her guilty of having violated RPC 1.16(d). Respondent's conduct resulted in additional counsel fees to both parties.

The complaint charged respondent with having violated RPC 1.16(a)(2) for failing to withdraw from the representation when her physical or mental condition was such that it materially impaired her ability to represent her client; RPC 1.16(d) for

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<sup>2</sup> The complaint mistakenly identified the trial date as December 3, 2010.

her failure to take steps to protect her client's interests upon the termination of the representation; RPC 8.4(d) for engaging in conduct prejudicial to the administration of justice by delaying the scheduled trial and interfering with the court's schedule.

Count two of the complaint charged respondent with failure to cooperate with the ethics investigation, in violation of RPC 8.1(b).

Specifically, on January 19, 2011, the OAE sent a letter to respondent's last known home address, 30 Banbury Court, Robbinsville, New Jersey, to determine if she had ceased practicing law or was disabled and unable to practice law. The letter was not returned. The OAE received no reply from respondent.

OAE auditor Stroz placed telephone calls to respondent at her home and cell phone numbers, on February 4, 2011, February 16, 2011, March 4, 2011, and May 9, 2011. The home telephone message mailbox was "full." The outgoing message for the cell phone announced respondent's name and accepted Stroz' voice messages for her to contact the OAE. Respondent did not reply to those OAE inquiries.

On March 9, 2011, the OAE sent a letter to the residence of Anna Cioffi, believed to be respondent's mother, at the Stillwells Corner Road address, in Freehold. The letter explained that the OAE was attempting to contact respondent. Enclosed was a copy of the OAE's January 19, 2011 letter to respondent. The OAE received no response to that inquiry.

On March 22, 2011, the OAE sent another letter to respondent's last known home address, in Robbinsville, requesting her reply by no later than April 5, 2011. The OAE received no reply.

On August 17, 18, and 22, 2011, Stroz again attempted to reach respondent at her home and cell phone numbers, as well as at the home number for respondent's mother. Messages left for respondent were not returned.

The facts recited in the complaint support the charges of unethical conduct. 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).

Here, respondent was close to the December 6, 2010 trial date in a matrimonial matter, when she allegedly fell ill. We know nothing to inform her of the nature of the illness.

However, on November 18, 2010, respondent called Legband about the illness and to cancel their meeting scheduled for later that day.

Thereafter, three days before the December 6, 2010 trial, respondent called the trial court judge and advised her that she was ill and required an adjournment. The judge granted that request and advised respondent to contact Legband, which respondent failed to do. In fact, Legband's later efforts to contact respondent were unavailing.

After Judge Fitzpatrick released respondent from the representation, respondent took no steps to protect her client's interests upon termination of the representation. In addition, by her failure to terminate the representation, when her health circumstances required it, we conclude that respondent violated RPC 1.16(a)(2).

Respondent also failed to cooperate with the OAE investigation into Legband's grievance. She ignored numerous letters and telephone inquiries from the OAE. Finally, she allowed this matter to proceed to us as a default. For all of it, she is guilty of having violated RPC 8.1(b).

We dismiss the remaining charge that respondent violated RPC 8.4(d) for engaging in conduct prejudicial to the

administration of justice by "delaying the scheduled trial" and "interfering with the Court's schedule." The only delay supported by the factual allegations of the complaint stemmed from Judge Fitzpatrick's granting of the trial adjournment, which was based on respondent's ill health. It appears that no other delay or interference was at play here.

Violations of RPC 1.16(d), often associated with an attorney's failure to return a client's file upon the termination of the representation, have yielded admonitions. See, e.g., In the Matter of Brian J. Muhlbaier, DRB 08-165 (October 1, 2008); In the Matter of Vinaya Saijwani, DRB 07-211 (November 13, 2007); and In the Matter of William A. Thompson, III, DRB 07-118 (July 24, 2007).

An attorney who violated RPC 1.16(a)(2) received an admonition. In the Matter of KayKay Davis-Daniels, DRB 05-218 (September 22, 2005). Specifically, the attorney was appointed by a South Carolina court as the personal representative of the estate of her life-long friend.<sup>3</sup> For a period of three years thereafter, she failed to apprise the court of problems encountered in fulfilling her role for the estate. Although her

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<sup>3</sup> Although Davis-Daniels was not acting in an attorney capacity, the RPCs were still applicable to her conduct.



physical condition had materially impaired her ability to serve the estate properly, she failed to ask the court to withdraw from the case. The attorney was also found guilty of conduct prejudicial to the administration of justice. After the court scheduled a hearing for an explanation of why the attorney had not performed her fiduciary obligations, and for her possible removal as personal representative, the attorney neither appeared at the hearing nor informed the court of her intended absence.

So, too, failure to cooperate with an ethics investigation ordinarily results in an admonition, if, as here, the attorney does not have an ethics history. See, e.g., In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until she finally retained ethics counsel to assist her); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the DEC's investigation of the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with committee's investigator's request for information about the grievance; the attorney also

violated RPC 1.1(a) and RPC 1.4(b)); and In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011) (after his ex-wife filed a grievance against him, attorney ignored numerous letters from the district ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to obtain information from other sources, including the probation department, the ex-wife's former lawyer, and the attorney's mortgage company).

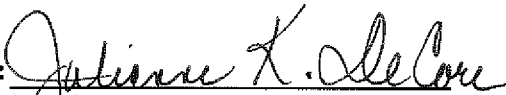
In mitigation, we considered that respondent has had no prior discipline in ten years. In aggravation, her conduct resulted in additional legal expense to the parties and she allowed this matter to proceed on a default basis. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

Taking into account respondent's ethics misdeeds, as well as the aggravating and the mitigating factors, we determine that a reprimand is the appropriate sanction in this case.

Member Clark did not participate.

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  
Louis Pashman, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Cinzia Cioffi  
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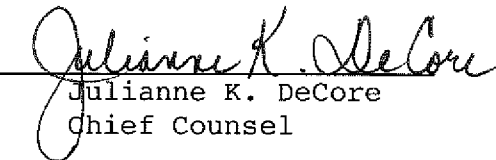
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Decided: October 22, 2012

Disposition: Reprimand

Members	Disbar	Three-month suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

  
Julianne K. DeCore  
Chief Counsel