SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 13-354 and 13-355
District Docket Nos. IX-2013-0003E
and IX-2012-0009E

IN THE MATTERS OF

FELICIA B. RUSSELL

AN ATTORNEY AT LAW

Decision

Argued: February 20, 2014

Decided: April 23, 2014

Margarie M. Herlihy appeared on behalf of the District IX Ethics Committee in District Docket No. IX-2013-0003E.

Claire Scully appeared on behalf of the District IX Ethics Committee in District Docket No. IX-2012-0009E.

Respondent's counsel waived appearance for oral argument.

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

These matters were before us on recommendations for discipline (a reprimand for each matter), filed by the District IX Ethics Committee (DEC). Two complaints charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and pattern

of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and (b) (failure to communicate with the client), RPC 5.5(a)(failure to maintain a bona fide office), and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to impose a censure for the combined misconduct in both matters.

Respondent was admitted to the New Jersey bar in 1982. On June 30, 2009, she received an admonition for gross neglect, lack of diligence, and failure to communicate with the client. In re Russell, 201 N.J. 409 (2009).

On March 17, 2010, respondent was reprimanded in connection with the refinance of a mortgage loan by her then-law partner, Ronald Sama. Respondent notarized the signature of Sama's wife, without having witnessed the signature. Respondent believed that the wife had signed the document, because the wife had been in the office that day. The discipline was enhanced from an admonition to a reprimand, based on respondent's earlier admonition. In re Russell, 201 N.J. 410 (2010).

I. THE WINKLER MATTER – Docket No. DRB 13-354 – District Docket No. IX-2013-0003E

The complaint charged respondent with violations of RPC 1.4(a), more properly (b) (failure to keep the client adequately

informed and to reply to reasonable requests for information), RPC 5.5(a), more properly (c) (5) (failure to maintain a bona fide office), and RPC 8.4(c) (misrepresentation).

Robert Winkler, the grievant, testified as follows, at the May 14, 2013 DEC hearing.

In early 2011, Winkler retained respondent to represent him in a post-judgment motion to enforce litigant's rights, filed by his ex-wife. He had been referred to respondent by his girlfriend, Cathy, a personal friend of respondent. By letter to the family court, dated March 16, 2011, respondent officially entered her appearance in the matter.

The first meeting between respondent and Winkler took place at the home of Winkler's girlfriend. Winkler recalled turning over copies of his utility bills, bank statements, etc., in sum, every document necessary to counter charges that he had "commingled" funds and had failed to pay certain bills that were his obligation to pay. Winkler was certain that he had furnished respondent with sufficient documentation for her to file a response to the motion. Respondent took notes of everything that Winkler told her, as they were preparing for the upcoming court date. Winkler understood that respondent was to appear in court

on his behalf, with the documents, and "counteract what they were accusing [him] of."

According to Winkler, respondent never provided him with any papers that she may have prepared in connection with the motion. When shown a copy of defendant's certification in opposition to plaintiff's motion, which bore his signature, Winkler testified that he had never seen that document before. He explained, "I think she gave me that signature page to sign so she wouldn't have to get the copies back to me, so she could get it [filed] right away."

Due to a conflict in his schedule, Winkler was unable to attend the May 6, 2011 return date on the motion. He had planned to attend a fundraising event for his son, to be held at a golf course. When he told respondent that he would forego the event if his presence in court was necessary, respondent advised him that his presence was not mandatory. Winkler then opted to attend the fundraiser. He testified that he kept his cell phone with him at all times that day, checking it frequently, but that respondent never called him.

According to Winkler, at 8:41 p.m. on the evening of May 6, 2011, respondent called him on his cell phone and told him that she had attended oral argument on the motion, that the mortgage,

child support and other marital expenses issues had been discussed "and it was going to be sent to mediation to discuss it further, and we would have to file a motion, and that is all. That is all she said, basically." Respondent did not disclose other details, such as the court's decision and order compelling Winkler to pay $39,580 in mortgage arrearages, $7,200 in child support arrearages, and two-thirds of the ex-wife's attorney's fees for the filing of the motion.

Winkler labored under the misapprehension that the issues were still unresolved. A year later, however, he learned, for the first time, that a judgment had been entered against him at the May 6, 2011 proceeding. Winkler retained another attorney to file a motion to relieve him of his alimony obligations. Winkler testified as follows:

> Q. Were you ever made aware by Ms. Russell that there was an Order?
>
> A. Absolutely not.
>
> Q. Did you contact the court to try to determine what was going on with your case?
>
> A. After months of asking her every week if anything was happening and she said no, I never heard anything, they are moving judges around, the summer is coming up, and they are really backlogged. So after weeks and weeks and weeks, I finally called the courthouse in August and gave them that

> docket number to find out what's going on with the case, and they said there is nothing going on. So by that point, I thought maybe everything was dropped or something. So I thought it went away.
>
> Q. These communications that you refer to with Ms. Russell about what's going on, where did they take place?
>
> A. A lot of times at the Elks; I would see her. If I didn't see her at the Elks, I would call her on the cell phone.
>
> Q. What specifically did you ask her?
>
> A. I wanted to know what was going on with the case, have you heard anything. She said no. She asked me, did you hear anything? I am like no.
>
> [T22-1 to T23-3.][1]

Winkler was asked if he had ever received from respondent a copy of a July 12, 2011 letter to her from Kevin Quinlan, his ex-wife's attorney, who had filed the original motion. That letter was a courtesy reminder that the court had awarded attorney's fees to his client and that Winkler would be subject to arrest, if they remained unpaid. The letter gave Winkler until July 15, 2011 to make the payment or Quinlan would "make

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[1] "T" refers to the transcript of the May 14, 2013 DEC hearing.

application to the court for issuance of an Arrest Warrant and fees and costs for having to make the application."

Winkler testified that respondent never advised him about that letter nor provided him with a copy of it. In fact, he said, he first learned of the letter when his new attorney received Quinlan's April 2012 motion to enforce the May 6, 2011 court order.

Finally, Winkler testified that he never received from respondent copies of the May 11 and June 27, 2011 letters from Quinlan to the judge assigned to the case. The first letter stated that, although Winkler had been listed as pro se, respondent had actually represented him on the return date of the motion. Also, it requested the involvement of the probation department for the payments expected from Winkler, under the earlier order. The second letter questioned whether the probation department had become involved yet, as his client had received no payments from Winkler. Respondent was copied on each of those letters.

On cross-examination, respondent's counsel asked Winkler if respondent had ever told him that she was going to represent him only in connection with the initial motion, but not thereafter. Winkler denied that she had ever told him so.

Respondent testified briefly about this matter. She was asked if she had prepared a written fee agreement for Winkler. She said that she had not, "because he was the boyfriend of a friend of mine, and I was just doing them a favor." She added that, although she intended to charge Winkler for her services, she recalled having told him not to worry about paying her in advance for her legal services.

With regard to the May 6, 2011 return date of Winkler's ex-wife's motion, respondent recalled that all of the issues had been adjudicated that day and that an order had been signed, but she claimed that she had never received a copy of the court order. Respondent testified that, when she communicated with Winkler about the matter, she indicated that she was awaiting an order from the court. She recalled having informed Winkler that the judge had decided that he owed money to his ex-wife, but that Winkler had to file a motion for reconsideration and request mediation. She also claimed to have told him, on more than one occasion, that she "couldn't do anything without a court order." She conceded that she had not sought to obtain a court order until after the ethics grievance against her had been filed.

On cross-examination, the following exchange took place between respondent and the presenter:

> Q. Well, you went to court on May 6th, 2011?
> A. Yes, I did.
>
> Q. So P-1 is marked filed with the chambers on May 6th, 2011?
>
> A. I see that.
>
> Q. Is that right?
>
> A. Well, I guess if that is what it says, that is what it is.
>
> Q. Okay. So he -- you were aware of the substance of his decision, correct?
>
> A. Of the —
>
> Q. Meaning that he ordered essentially Mr. Winkler to pay 60 some odd thousand dollars and fees?
>
> A. I was aware -- yes, I was aware that the decision was going to go against Mr. Winkler. That is why I said we would have to make a motion and request mediation.
>
> Q. That it did go against Mr. Winkler?
>
> A. But I never received the Order.
>
> Q. But you knew that when Judge Troncone said it?
>
> A. Yes.
>
> Q. Because you were sitting there on behalf of Mr. Winkler?

A. Yes.

Q. And you never relayed that information to Mr. Winkler?
A. I did. I relayed it to him. I said we would have to make a motion for reconsideration and request mediation.

Q. Did you tell him specifically that he owed all this money?

A. No, because I did not have the specifics.

Q. Well, you were sitting there when the Judge made his decision, were you not, on behalf of Mr. Winkler?

A. Yes, I was.

Q. So how could you not have had the specifics?

A. I don't know that the Judge read the Order or his decision and the Order at the hearing.

Q. Well —

A. I don't know.

Q. Well, the hearing was May 6th, 2011, right?

A. Yes.

Q. And it's written on May 6th, 2011?

A. Yes. It is, yes.

[T65-25 to T67-25.]

Respondent's testimony then moved on to the issue of her office location, as it related to the charge that she had failed to maintain a bona fide office in New Jersey. The salient fact is that, since 1984, respondent has consistently maintained a home office in New Jersey, at 232 Beechwood Drive, Shrewsbury.

When entering her appearance in the Winkler matter, respondent used her home office address because, she said, she had just recently closed her other office, located at 249 North Main Street, Post Office Box 271, Forked River. Yet, Winkler's certification in opposition to the ex-wife's original motion, dated "March [ ] 2011," filed by respondent as "Attorney for Defendant," listed respondent's office address as "Felicia Bonanno Russell, LLC, P.O. Bo [sic] 271, Forked River, NJ 08731."

Respondent did not explain why she had used two different addresses in the matter, but suggested that that circumstance might have explained why she had not received the May 6, 2011 court order. Likewise, she did not explain why she had never reached out to the court for a copy of the May 6, 2011 order, once it was obvious that she should have received it.

Quinlan testified about misrepresentations that respondent allegedly made to him and to the court. The first alleged

misrepresentation was that, in a letter to the court, respondent falsely stated that Quinlan had consented to a four-week adjournment of the return date on the motion.[2] The second misrepresentation occurred as follows: On the May 6, 2011 return date of his motion, prior to it being heard, Quinlan and respondent engaged in a settlement conference, during which respondent misrepresented to Quinlan that she was conferring with Winkler over the telephone. In an exchange with the presenter, Quinlan testified as follows:

> Q. And the motion was actually argued before the court; is that correct?
>
> A. That's correct.
>
> Q. Prior to the motion, did you have an occasion to engage in any settlement negotiations in regard to the underlying matter?
>
> A. Yes. For quite some time we were out in the hallway sitting on the benches discussing it. On at least two occasions, I think more, but I know for a fact at least two occasions Ms. Russell excused herself to confer with her client by telephone. Mr. Winkler was not present in Court.

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[2] Respondent was not charged with having made a misrepresentation in a letter to the court, nor was she asked to testify about it, at the DEC hearing.

> She would go down the hall, around the corner. Some time would pass, and she would come back, and we weren't able to resolve the matter.
>
> Q. Did you ever actually hear her speak to Mr. Winkler?
>
> A. No. She would go down the hall or around the corner.
>
> Q. When she returned, would she indicate that she had spoken to Mr. Winkler?
>
> A. She indicated she was conferring that he was not agreeable to whatever we were discussing at that time.
>
> [T52-1 to 25.]

Quinlan did not testify about the allegation in the complaint that respondent had also misrepresented to the court that she had been conferring with her client, by telephone, and that he had refused the ex-wife's settlement terms.

Winkler denied that respondent had called him on May 6, 2011, prior to 8:41 p.m. His telephone records for May 6, 2011, included as an unmarked exhibit to the ethics complaint, showed a single call from respondent, at 8:41 p.m.

Regarding the alleged misrepresentation to Quinlan, respondent's answer stated, "I do not recall whether I had indicated to adverse counsel that I was in communication with the Grievant via telephone during the hearing." Likewise,

regarding a similar misrepresentation to the court, respondent's answer stated, "I do not recall representing to the Court that I was in communication with [Winkler] via telephone," during the hearing.

At the conclusion of the DEC hearing, respondent had an opportunity to clear up some lingering confusion that the hearing panel had about her alleged misrepresentation to Quinlan, namely, that she had been actively communicating with Winkler by telephone, from the hallway of the courthouse. A panel member asked Winkler the following:

> [PANEL MEMBER] Did Ms. Russell ever call you during the day?
>
> MR. WINKLER: No, and I have the phone records from my cell phone.
>
> [PANEL MEMBER]: Because Mr. Quinlan said she left the outside bench and went down the hall and around the corner.
>
> MR. WINKLER: That's what he told my new attorney, and I never received a call. That's why -- and I do have the phone records.
>
> [PRESENTER]: I think in Ms. Russell's Answer she indicated there was not communication during the day, if I'm not incorrect.
>
> [PANEL MEMBER]: But Mr. Quinlan said there was?
>
> [PRESENTER]: Yes.

[PANEL CHAIR]: Okay. Thank you.

[T73-2 to 18.]

Respondent was not questioned about the alleged misrepresentation to Quinlan or the court. She did not elaborate on the issue, of her own accord. As indicated previously, in her answer, she professed having no recollection of having told either Quinlan or the court that she had been conferring with Winkler.

The DEC concluded that respondent misrepresented to Quinlan that she was actively discussing negotiations with Winkler, by telephone, on the May 6, 2011 return date of the motion, a violation of RPC 8.4(c).

The DEC did not address the other RPC 8.4(c) charge, that is, that respondent had also misrepresented to the court that she had communications with Winkler, while in the courthouse, and that he had refused the ex-wife's settlement offer.

The DEC dismissed the charge that respondent failed to keep Winkler reasonably informed about the status of his matter or to reply to his reasonable requests for information (RPC 1.4(b)). The DEC noted that Winkler talked frequently with respondent and always had access to her, via her cell phone number.

Finally, the DEC dismissed the charge that respondent failed to maintain a bona fide office in New Jersey, noting that, since 1984, she had maintained a separate law office at the Shrewsbury address where she lived and that rule R. 1:21-1 does not require a physical location for the practice of law. Rather, it requires only that an attorney "must structure his or her practice in such a manner as to assure, as set forth in RPC 1.4, prompt and reliable communication with and accessibility by clients . . ." R. 1:21-1(a)(1).

The DEC recommended a reprimand for respondent's conduct in the Winkler matter.

II. THE GENNARO MATTER — Docket No. DRB 13-355 - District Docket No. IX-2012-0009E

A three-count complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to adequately communicate with the client and to reply to the client's reasonable requests for information).

In October 2009, Paul Gennaro and his wife, Margaret Enrico (the buyers), retained respondent to represent them in connection with the purchase of a summer house in Forked River.

Prior to the April 27, 2010 closing, an issue arose regarding the operability of the furnace in the house.

Because the gas service to the house had been shut off, prior to the purchase, thereby preventing the furnace from being tested, the parties agreed to escrow $4,000 of the sale proceeds, to be held by the sellers' attorney, Edmund McCann, until the condition of the furnace could be established.

McCann prepared an escrow agreement that called for the furnace to be repaired, if it was found to be broken. The buyers made several handwritten changes to the agreement, in hopes that they could have the furnace replaced, instead of repaired. They also changed the date for the completion of the testing and repair of the furnace to July 1, 2010. The sellers agreed only to the extension of time to July 1, 2010, rejecting the remaining handwritten changes.

On April 29, 2010, respondent sent McCann a letter, confirming the sole change to the agreement. She did not copy her clients on that correspondence.

Under the terms of the modified agreement, the buyers were given until July 1, 2010 to furnish sellers with proof that the furnace was inoperable, along with a written estimate for any necessary repairs, prepared by a licensed mechanical contractor.

Although the buyers provided an estimate to repair the apparently cracked furnace, it was not prepared by a licensed mechanical contractor, as required, and did not state that the unit was inoperable or irreparable.

At the DEC hearing, Margaret Enrico testified at some length about the transaction.[3] She recalled having procured an initial estimate from "Dennis Terhune, Heating and Air Conditioning" (spelled "Tahoon" in the DEC transcript). Terhune's June 16, 2010 estimate called for the replacement of the furnace, due to a crack. Another company, Vintony Mechanical, Inc., also provided an estimate to replace the furnace. That estimate did not state that the existing unit required replacement. Yet another estimate, from "Long's Air Conditioning and Heating," stated that the unit was "unsafe to operate," but did not state that it was irreparable. Finally, a "violation tag" had been placed on the furnace by the gas

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[3] Paul Gennaro, a medical doctor, testified briefly, after his wife, but deferred to her version of events, as she was much more involved in the transaction.

company, prohibiting its use until a faulty blower unit was "corrected."

On June 19, 2010, Enrico sent respondent the replacement estimates and violation tag. On June 29, 2010, she spoke to respondent about the furnace documents. Under cover letter of even date, respondent sent the documents to McCann, requesting that he contact her to resolve the matter.

Enrico recalled that, sometime thereafter, in a subsequent conversation with respondent, respondent "had said she would need some additional documentation, and I can't even tell you the date of that, whether it was in July or August." On cross-examination, Enrico recalled that respondent had advised her, in an email, that she needed a licensed HVAC person to come out to inspect the furnace, at a cost of $150, because the documents previously provided were unsatisfactory to the sellers. Enrico, however, provided respondent with no other information, saying, "I figured I had a licensed HVAC person" among the original estimates. When Enrico was pressed why she had not complied with respondent's request, if respondent had advised her that the original materials were insufficient and that another $150 was required to obtain the appropriate report, Enrico replied, "I don't know. I just assumed it was kind of a waste, and it was

just -- I don't know. . . . . Apparently I didn't think it was important for somebody else to come out and do it."

Enrico testified that, after the closing, she began to experience problems getting in touch with respondent. Specifically, she sent respondent four emails, between June 23 and July 22, 2010. Respondent replied only to the July 22, 2010 email, advising her clients that taxes were paid and current and that she had been in contact with McCann regarding the escrow. She asked when Enrico "will be down," presumably to discuss the furnace matter.

Thereafter, Enrico sent respondent an August 1, 2010 and a September 5, 2010 email, the latter seeking respondent's advice about suing the sellers for the release of the escrow funds. Respondent replied on September 8, 2010, reiterating that, "we could take them to Court on these issues. The only additional thing we may need is a longer report from a heating specialist."

On September 12, 2010, Enrico sent respondent another email, recapping the sufficiency of the previously-supplied documents supporting the replacement of the furnace and requesting additional information about the case:

> Paul and I want to have the heating unit replaced before it gets cold. . . . Vin Tony, [the sellers'] *own* service, stated

> they had been winterizing this house for eight years.
>
> Have the sellers breached the escrow agreement? . . . Do McCann and McCann, Esqs., still have our escrow money in their account? How can this happen when we have a signed agreement? They never attempted to send someone to inspect this unit as stated in the escrow agreement.
>
> Please call us . . . .
>
> [Ex.P-4.]

On November 16, 2010, Enrico sent respondent two emails, asking for information about various aspects of the transaction, because she had not received copies of the closing documents or any final word on the furnace. On December 6, 2010, Enrico and her husband sent respondent a letter, stating that, unless they heard from her by December 17, 2010, they would file an ethics grievance against her.[4] Enrico followed that letter with a December 13, 2010 email to respondent:

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[4] Delivery of the December 6, 2010 letter was allegedly attempted at respondent's Shrewsbury home office address, between eight and ten times, before being returned to Enrico. However, the envelope bears the postage date November 17, 2010, well before the December 6, 2010 date of the letter in question. Enrico was not asked about this discrepancy.

> We closed on 1804 Beach Boulevard, Forked River on April 27, 2010. We have not yet received copies of the HUD Form I or Disclosure/Settlement Statement, the search and title insurance, the beach club shares, the escrow agreement and money placed in escrow for the furnace. Despite many attempts to contact you regarding these issues, including email, phone, text, and certified mail [sic]. We have been advised to file an ethics complaint against you. We sincerely hope this can be resolved before we have to take this action.
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> [Ex.P-3.]

Respondent replied the following day, stating simply, "Due to the problems with Comcast, I have not been able to operate my fax machine and the email is unreliable. I will drop off the paperwork on or before the weekend."

Hearing nothing further from respondent, on January 13, 2011, Enrico sent another email, stating that, although nine months had passed since the closing, they still had not received the remainder of their closing documents.

In the meantime, on July 28, 2010, McCann sent respondent a letter, by fax and regular mail, pointing out that the deadline set forth in the escrow agreement had not been met and that his clients were demanding the release of the escrow funds. McCann re-sent that letter, as a second request, on August 5, 2010. His

facsimile transmittal confirmations show that the letter was received by respondent's fax machine, on both dates.

On August 6, 2010, McCann sent respondent another letter, advising her that, unless he received supporting documents regarding the furnace by August 13, 2010, he would release the escrow funds to his clients. McCann received no communications from respondent

On August 20, 2010, McCann sent respondent a final letter, stating that, because he had heard nothing from her, he "will release to the Seller this date the entire $4,000 escrow."

Enrico testified that respondent never notified them of McCann's letters or of the August 20, 2010 release of the escrow funds. Enrico added that she and her husband saw McCann's letters, for the first time, at the ethics hearing. In fact, Enrico stated, on August 30, 2010, respondent's secretary, Judy, had delivered some of the documents that they had been requesting. At that time, Judy had advised them that she thought that the escrow funds had not been released.

For her part, respondent testified that the April 27, 2010 closing was a "time of the essence" one and that the escrow agreement had been a last-minute resolution to the furnace issue. Respondent also recalled that McCann had agreed to an

extension of time until July 1, 2010, to give the buyers more time to provide supporting documentation about the furnace issue.

Respondent remembered having also received a letter from McCann, in July 2010, stating that the documents provided by the buyers were unacceptable because, respondent said, "some of them weren't licensed contractors. Now, I know that Ms. Gennaro thought Dennis Tahoon was, but it wasn't on his initial -- his license number wasn't on there, and as it turned out, he really wasn't a licensed HVAC contractor, and [the documents] weren't specific." Respondent then retained Long's Air Conditioning and Heating to prepare a report that would benefit her clients:

> I did get it on the 29th, and when I received Richie's on the 29th, which was vague, and he did -- he did word it as best he could to our advantage because I was, you know, representing the Gennaros, and I was trying to do my best for them and get them what they wanted, and he did word it, and you know, I faxed that all over to McCann's office on June 29th . . . .
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> [T113-1 to 8.]

Respondent admitted having received McCann's July 28, August 5, and August 6, 2010 letters, threatening to release the escrow funds. She recalled thinking at the time that he was "grandstanding" for his clients, because she "knew that he could

not release the escrow without an authorization from both sides."

Respondent conceded that she never discussed those letters with the buyers. She stated that, she had "no fear that the escrow was going to be released," even though Enrico saw no need to furnish an additional report.

When asked why she had replied to only two of Enrico's numerous emails to her, sent between June 2010 and January 2011 and seeking information about the transaction, respondent replied, "I am not a big e-mailer. I mean, I do answer e-mails when I get them, but sometimes I respond to them in different ways, not necessarily by e-mail." She suggested that she may have called Enrico to discuss the emails, but provided no support, such as telephone records, for that assertion. She added that she may not have received Enrico's emails after December 2010, because "Comcast" closed her commercial email account, when she closed her Forked River office.

Respondent denied having received McCann's August 20, 2010 letter, announcing his release of the escrow funds to his clients on that date. That letter was sent to respondent's law office at 133 South Main Street, PO Box 171, Forked River, New Jersey 08371. Respondent testified that she maintained an office

at 133 South Main Street from February 2009 through October 2010. Apparently, McCann's use of the wrong post office box number was not noticed at the DEC hearing. The correct post office box was 271, as evidenced by respondent's own letterhead. Post office box 171 appears on all of McCann's letters, including the August 20, 2010 correspondence. All of the previous letters, however, which respondent received, were faxed to her, as indicated by transmission reports from McCann's office, indicating successful transfers. There is no transmission report in the record for the August 20, 2010 letter.

According to respondent, she believed that McCann was just "bluffing" about releasing the escrow funds and that he would continue to maintain them in his trust account. Respondent stated that she learned of the escrow release when she was served with the ethics complaint in this matter.

In addition, respondent considered the status of the matter as stalled, when, in September 2010, it became clear, from her conversations with Enrico, that the couple was not going to furnish additional documentation in pursuit of a replacement furnace. Respondent lamented that, although she had tried to impress upon Enrico the urgent need for supplemental

information, in a manner that Enrico would understand, respondent was unsuccessful. She testified as follows:

> There were times when I called [Enrico] and texted her with Judy standing there. There was a time when Judy and I went over all of the paperwork trying all -- everything, every document that [Enrico] had sent with regard to the report. Both of us were sitting in my office in Shrewsbury. We went over every one of them with her. We were both on the phone with her, and we said we need a more specific report on it.
>
> Yeah, I wasn't -- I tried to respond to everything that she asked, but the bottom line was, and I think she understood it, was that we needed to litigate this, that we thought they were still holding the escrow, but even if they weren't, they weren't going to release it to us unless we litigated.
>
> Q. And yet you didn't litigate?
>
> A. No, I didn't because I wasn't retained to litigate, and I did not have the proper documentation in order to litigate.
>
> Q. Did you send any final letters to Ms. Gennaro or Dr. Gennaro about here is how we left it; here is what needs to happen?
>
> A. No. No, I didn't. No, I didn't.
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> [T131-2 to 25.]

The DEC determined that respondent lacked diligence in and grossly neglected the matter (RPC 1.3 and RPC 1.1(a), respectively) by failing to reply to letters from counsel for

the sellers about the release of the escrow being held; failing to file suit against the sellers for the return of those funds; and failing to reply to the buyers' requests for information over several months, while at the same time not advising them that the escrow funds had been released. The DEC also found a pattern of neglect, by the combination of the gross neglect here with that found in respondent's prior disciplinary matter.

The DEC further found that respondent failed to keep her clients adequately informed about the matter and to reply to their reasonable requests for information (RPC 1.4(b)), in that she failed to reply to her clients' communications and to advise them that the escrow had been released.

For respondent's violations in the Gennaro matter, the DEC recommended a reprimand.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

As to the misrepresentation charges in the Winkler matter, Winkler testified that respondent never called him, on May 6, 2011, while in the courthouse. The complaint contained an unmarked exhibit, Winkler's telephone records, in support of that charge. In fact, respondent admitted, in her answer, that

she did not call Winkler from the courthouse that day. In her answer, however, she professed to have no recollection of having told either Quinlan or the court that she had been conferring with Winkler by telephone, from the courthouse, about his ex-wife's settlement proposal.[5] Like the DEC, we find that the record amply supports the charge that respondent made a misrepresentation to Quinlan, a violation of RPC 8.4(c).

The complaint also charged respondent with having made the same misrepresentation to the court that day, that is, that she had been in discussions with her client by telephone, but that he had refused to settle the matter. When Quinlan testified at the DEC hearing, he was asked about respondent's statements to the court. He only addressed the statements that she had made to him, however. Respondent, too, was never asked to explain her actions in the courtroom. For lack of clear and convincing evidence that respondent lied to the court, we determine to dismiss this RPC 8.4(c) charge.

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[5] At the DEC hearing, respondent did not avail herself of an opportunity to testify about the misrepresentation charges, despite having heard Quinlan's testimony that she had represented to him that she had been in touch with Winkler.

In aggravation, respondent made misrepresentations by silence to Winkler, when immediately after the court's decision, she promptly failed to tell him about the unfavorable findings against him. She maintained that lie for the year that followed, always telling Winkler that she was unaware of any developments in the case. Yet, respondent knew about the exact figures that Winkler was required to pay. She attended the May 6, 2011 proceeding and had to be aware of the result of the motion, regardless of whether she had received a copy of the court order.

Yet, respondent testified that she told Winkler only that they needed to file a motion for reconsideration and request mediation. Winkler could not have been expected to know what that meant. Respondent failed to give him the most important information: the court's direction that he pay his ex-wife tens of thousands of dollars.

Respondent's failure to inform Winkler of the court's decision on the motion violated RPC 1.4(b), by her failure to adequately communicate with the client about important aspects of the case, and RPC 8.4(c), by her misrepresentation to him by silence.

The DEC correctly dismissed the allegation that respondent failed to maintain a bona fide office, during the time in question. Respondent testified that she has maintained a law office at her home, uninterruptedly, since 1984. Moreover, she claimed, Winkler was always able reach her, as she had given him her cell phone number as well. For lack of clear and convincing evidence of the charged violation of RPC 5.5(a), we determine to dismiss it.

In the Gennaro matter, Enrico and Gennaro, respondent's clients, purchased a summer house. The parties agreed that the sellers' attorney, McCann, would hold $4,000 in escrow until it could be determined if the furnace operated properly. The buyers were given until July 1, 2010 to present a licensed mechanical contractor's report on any problems that required its repair.

As it turned out, the furnace was in need of repairs, if not replacement. Enrico obtained several estimates to have the system replaced, not for its repair. Under the terms of the escrow agreement, the unit was to be repaired, if possible. Meanwhile, the sellers had rejected Enrico and Gennaro's handwritten changes to the escrow agreement, which would have allowed for replacement of the furnace. Respondent explained the sellers' rejection to her clients.

Nevertheless, Enrico pressed forward with only the estimates for replacement. As time was short, respondent provided them to McCann, the sellers' attorney, just prior to the July 1, 2010 deadline. The sellers refused to accept the estimates, variously because the providers were not licensed mechanical contractors or because their documentation lacked information to substantiate that the furnace was not repairable.

In July and August 2010, McCann sent several letters to respondent, stating that the buyers' documentation was deficient and that he intended to release the escrow funds to his clients.

On August 20, 2010, McCann sent a letter to respondent at the wrong post office box, in Forked River, announcing that he was releasing the funds to his clients that day. Respondent never received the letter, maintaining the assumption that McCann was just "bluffing." Respondent testified that she knew that both parties to an escrow agreement must agree to the release of funds or the funds must remain intact.

Meanwhile, in spite of respondent's admonition to the contrary, Enrico had decided that it was unimportant to supply the sellers with supplemental documentation, in support of her quest to replace the furnace out of escrow funds. The time was September 2010. Respondent considered the matter to be at an

impasse. She had already explained to Enrico that they would have to take the sellers to court, in order to obtain the release of the funds, and that to do so would require the supplemental documentation requested by the sellers. Her explanations to her clients produced no results.

All of the significant events took place over a very short period of time, from July 1 to September 2010. During that time, respondent obtained estimates from her clients for the corrections to the heating system in the house and forwarded them to the sellers' attorney. She provided closing documents to the clients, as they became available, and she discussed with them the need for supplemental documentation to support the installation of the new furnace.

Thereafter, unbeknownst to respondent, the escrow funds were released. She should, however, have replied to the letters that she received from McCann. Had she done so, McCann may not have taken such drastic (albeit improper) action.

We find that respondent's failure to reply to McCann's repeated requests for the buyers' position on the furnace constituted a lack of diligence, a violation of RPC 1.3.

We do not, however, conclude that her failure to do so constituted gross neglect. As respondent stated, after September

2010, she was between a "rock and a hard place" with her clients. On the one hand, they were being uncooperative. On the other hand, their cooperation was the only way to move the case forward. Moreover, respondent always believed that the funds were safe in McCann's trust account, given that the consent of both parties to an escrow agreement is required for the release of escrow funds. For these reasons, we dismiss the charges of gross neglect and pattern of neglect (RPC 1.1(a) and (b)).

Respondent did, however, fail to keep her clients adequately informed and to promptly reply to their reasonable requests for information about the case. Enrico sent respondent over a dozen emails and letters, between June 2010 and January 2011, only two of which respondent answered. During that time, had respondent been in communication with Enrico and Gennaro, those emails would not have been necessary. Respondent also failed to inform her clients about the all-important letters that she received from McCann, during July and August 2010, highlighting the importance of furnishing supplemental materials about the furnace repairs, or else he would release the funds to his clients. We find, thus, that respondent violated RPC 1.4(b).

In summary, in the Winkler matter, respondent violated RPC 1.4(b) and RPC 8.4(c). In the Gennaro matter, she violated RPC 1.3 and RPC 1.4(b).

Misrepresentations require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions, as here. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations to the client about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney

also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

Here, there is the aggravating factor of respondent's prior discipline – a reprimand in 2010 and an admonition in 2009, the latter for similar misconduct. Because of respondent's prior discipline, we determine to impose a censure.

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: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Felicia B. Russell
Docket Nos. DRB 13-354 and DRB 13-355

Argued: February 20, 2014

Decided: April 23, 2014

Disposition: Censure

Members	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:			9			

Isabel Frank
Acting Chief Counsel