

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-230
District Docket No. XIV-2011-0501E

IN THE MATTER OF :
:
CINZIA CIOFFI :
:
AN ATTORNEY AT LAW :
:

Corrected Decision

Decided: November 26, 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 gross neglect (RPC 1.1(a)); lack of diligence (RPC 1.3); failure to communicate with the client (RPC 1.4(b)); and failure to return an unearned fee (RPC 1.5(a), more properly RPC 1.16(d)); practicing law while ineligible to do so for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF) (RPC 5.5(a)(1)); and failure to cooperate with an ethics investigation (RPC 8.1(b)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2001. By Court order filed March 8, 2013, respondent was reprimanded in a default matter for violations of RPC 1.16(a)(2) (failure to withdraw from the representation), RPC 1.16(d) (failure to protect client's interests upon termination of the representation), and RPC 8.1(b) (failure to cooperate with an ethics investigation). In re Cioffi, 213 N.J. 87 (2013).

Service of process was proper in this matter. According to the July 10, 2012 certification of service from the OAE, on January 19, 2011, Mercer County Family Court Judge Catherine Fitzpatrick advised OAE Auditor Gary Stroz that respondent, who had been employed by the Teich Groh law firm, was no longer employed there. On January 10, 2012, the OAE mailed a copy of the grievance to respondent's home address, 30 Banbury Court, Robbinsville, New Jersey 08691, by regular and certified mail, return receipt requested.

The certified mail was returned to the OAE on January 17, 2012, marked "Not Deliverable as Addressed. Unable to Forward." The regular mail was not returned.

On January 26, 2012, the OAE mailed a second letter to respondent's home address in Robbinsville, by both certified and regular mail.

On February 4, 2012, the certified mail was returned to the OAE, marked "Not Deliverable as Addressed. Unable to Forward." The regular mail was returned marked "Return to Sender-Vacant-Unable to Forward."

On March 8, 2012, OAE auditor Gary Stroz traveled to 89 Stillwells Corner Road, Freehold, the home of respondent's mother. Upon finding respondent at that location, Stroz hand-delivered to her a copy of the January 10, 2012 OAE's cover letter, the grievance, and the OAE's January 26, 2012 letter. On that day, respondent told Stroz that all OAE mailings could be sent to her at her mother's Freehold address.

The facts are as follows:

In July 2010, Mary Lou DiStaulo retained respondent to represent her in a divorce matter. In furtherance of the representation, DiStaulo sent respondent a \$4,000 check on November 23, 2010, along with the signed fee agreement that respondent had prepared for signature.

From December 2010 to May 2011, DiStaulo sent information to respondent relative to the divorce, including financial information. On May 11, 2011, DiStaulo sent documents to respondent's facsimile number, but the transmission was

unsuccessful because respondent's fax machine was not receiving facsimiles.

On May 16, 2011, respondent advised DiStaulo that she should give the documents to respondent's aunt, with whom DiStaulo van-pooled.

DiStaulo sent letters to respondent on June 5, June 18, June 26, July 6, and July 21, 2011, attempting to get information concerning the divorce proceedings, but respondent did not reply to those requests for information. Respondent did leave a voicemail message for DiStaulo on July 6, 2011, but it was not responsive to her inquiries.

DiStaulo never received the documents that respondent promised to send her or any replies to her requests for information about her matter.

As of December 2011, DiStaulo was still in the dark about the status of her divorce matter and was unsure if respondent had ever filed a complaint on her behalf. According to the complaint, there is no record in New Jersey of a divorce complaint ever having been filed on behalf of DiStaulo.

According to the complaint, when DiStaulo requested the return of the \$4,000 that she had given respondent toward legal fees, respondent ignored that request. However, in an August 3,

2012 letter to Office of Board Counsel (OBC), OAE counsel advised us that respondent had, at some point in time, returned the \$4,000 to the client. Thus, that office sought to withdraw paragraphs thirteen and sixteen of the complaint (more accurately, paragraphs fourteen and seventeen), charging respondent with a failure to refund an unearned retainer.

On September 27, 2010, respondent was declared ineligible to practice law for failure to pay the 2010 CPF annual assessment. From then until February 17, 2011 (when respondent paid the assessment), respondent continued to practice law, as evidenced by her acceptance of DiStaulo's matter and of the \$4,000 retainer on account of legal services to be provided.

On October 19, 2011, the OAE mailed the grievance to respondent at her Robbinsville home address, with a letter requesting her reply within ten days. The letter was returned, presumably by the United States Post Office.

On October 31, 2011, the OAE sent respondent a second letter to the same address, again seeking her reply to the grievance. That letter, too, was returned.

On November 1, 2011, the OAE sent a third letter, this time to respondent's mother's address, in Freehold. Although this third letter was not returned, respondent did not reply to it.

Thereafter, between November 14, 2011 and January 27, 2012, the OAE sent several more letters to respondent and also made telephonic attempts to prompt respondent to reply to the grievance, all of which went unheeded. On March 8, 2012, Stroz traveled to Freehold and hand-delivered the grievance to respondent at her mother's home.

On March 23, 2012, the OAE sent a final letter to respondent at the Freehold address, giving her until April 2, 2012 to provide a reply. The letter was sent by regular mail and certified mail, return receipt requested. The certified mail was returned, marked "Unclaimed, Unable to Forward." The regular mail was not returned.

Respondent did not reply to the grievance.

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).

DiStaulo retained respondent to file and pursue a divorce complaint against her husband. On November 22, 2010, DiStaulo signed a written fee agreement and returned it to respondent, along with a check for \$4,000. For the next several months,

DiStaulo gathered and sent to respondent financial documents necessary for the divorce proceedings.

In May 2011, DiStaulo experienced difficulty communicating with respondent. For example, when, on May 11, 2011, she attempted to send documents to respondent by facsimile, respondent's fax machine rejected her transmission. A few days later, respondent instructed DiStaulo to give the documents to respondent's relative, with whom DiStaulo van-pooled.

Thereafter, DiStaulo sent respondent letters and left voicemail messages, seeking information about the status of her case, but respondent did not reply to those requests for information. Months later, in December 2011, respondent still had not contacted her client, who remained unaware of whether respondent had filed a complaint in her behalf. In fact, there is no record of a divorce complaint ever having been filed for DiStaulo, in New Jersey.

Finally, the OAE withdrew the charge related to respondent's fee (RPC 1.5(a), more properly RPC 1.16(d)), after that office learned that respondent had returned the fee to the client.

For respondent's total failure to prosecute DiStaulo's divorce action, we find respondent guilty of gross neglect and

lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively. In addition, her failure to reply to the client's reasonable requests for information about the status of the case from November 2010 to December 2011, violated RPC 1.4(b).

Respondent also practiced law while ineligible to do so for failure to pay the 2010 CPF attorney assessment. On September 27, 2010, she was declared ineligible to practice law. From at least November 2010, when she undertook the within representation and accepted the \$4,000 fee, until February 17, 2011, when she paid the CPF, respondent practiced law unabated. In so doing, she violated RPC 5.5(a)(1).

Finally, respondent failed to cooperate with the OAE investigation of DiStaulo's grievance, ignoring numerous letters and telephone inquiries from the OAE. She, thus, violated RPC 8.1(b).

Generally, in a default matter, a reprimand is imposed for gross neglect, lack of diligence, and failure to communicate with the client. See, e.g., In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of the grievance); In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to

cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); and In re Lampidis, 153 N.J. 367 (1998) (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the ethics investigator's requests for information about the grievance; the attorney also failed to communicate with the client).

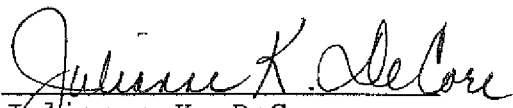
In default cases where prior discipline is a factor, censures have been imposed. See, e.g., In re Oxfeld, 200 N.J. 268 (2009) (attorney failed to file suit on her client's behalf and failed to comply with the client's requests for information about the case; two prior admonitions and a reprimand) and In re Banas, 194 N.J. 504 (2008) (attorney found guilty of lack of diligence and failure to communicate with a client for whom he was handling two separate matters; the censure was premised on the attorney's conduct, the default nature of the proceedings, and the attorney's disciplinary record -- a reprimand and a three-month suspension, the latter also a default).

As indicated previously, the Court recently reprimanded respondent. In our view, a second reprimand does not

sufficiently address the totality of respondent's misconduct and her continued disregard for her clients and the disciplinary system. We, therefore, determine to impose a censure in this case.

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


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

In the Matter of Cinzia Cioffi
Docket No. DRB 12-230

Decided: May 2, 2013

Disposition: Censure

Members	Disbar	Censure	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:		9				


Julianne K. DeCore
Chief Counsel