

B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-106
District Docket No. XIV-03-767E

IN THE MATTER OF
JILL R. EPSTEIN
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)]

Decided: August 15, 2006

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 Office of Attorney Ethics ("OAE") pursuant to R.
1:20-4(f).

Respondent was admitted to the New Jersey bar in 2000. At
the relevant times, she maintained an office for the practice of
law in Old Bridge. She has no disciplinary history.

Since September 15, 2003, respondent has been on the ineligible list for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper. On October 6, 2005, the OAE sent a copy of the complaint to respondent at 2533 Batchelder Street, Apt. #5-F, Brooklyn, New York 11235, which was the address that respondent had provided to the OAE during the course of its investigation. The complaint was sent to her via regular and certified mail, return receipt requested. The receipt was returned with an illegible signature. The regular mail letter was not returned.

On November 2, 2005, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed her that, if she failed to do so, the record would be certified directly to us for the imposition of sanction. The letter sent via certified mail was returned with the notation "unclaimed." The letter sent via regular mail was not returned.

On February 24, 2006, pursuant to R. 1:20-7(h), the OAE transmitted a copy of the complaint to respondent at the address listed in the records of the New Jersey Lawyers' Fund for Client

Protection, 2455 Highway 516, Old Bridge, New Jersey 08857.

The letter was sent via regular and certified mail, return receipt requested. The green card was returned with an illegible signature. The regular mail was not returned.

On March 24, 2006, the OAE sent a five-day letter to that same address, via regular and certified mail, return receipt requested. Someone signed (name illegible) for the certified letter the next day. The letter sent via regular mail was not returned.

As of April 6, 2006, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default. For the reasons detailed below, we determine to impose a reprimand in this case.

The three-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client), RPC 1.15(b) (failure to promptly deliver funds to a client), RPC 1.15(d) (failure to comply with R. 1:21-6), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

According to the allegations of the first count, respondent represented Paul Herrmann in the purchase of a Trenton home. Settlement took place on March 25, 2003. At settlement, \$3000

was placed in escrow with respondent, pending resolution of a dispute between Herrmann and the seller over a pool inspection.

Thereafter, on a number of occasions, Herrmann and his wife attempted to contact respondent to assist them with the resolution of the dispute. Respondent "failed to respond and communicate." Accordingly, on August 25, 2003, Herrmann's wife filed an ethics grievance against respondent.

The seller sued Herrmann for the \$3000 in escrow. On December 5, 2003, the parties settled the suit, the terms of which required \$1900 to be released to the seller and \$1100 to be distributed to Herrmann.

"On multiple occasions," after the lawsuit had settled, the Herrmanns called respondent for the purpose of obtaining the release of the escrowed funds. On October 15, 2004, respondent contacted the Herrmanns and requested them to fax the settlement agreement to her. They did so that same day. However, it was not until March 2005 - five months later - that respondent disbursed the \$3000 in escrowed funds pursuant to the terms of the settlement agreement.

Based upon these allegations, the first count of the complaint charged respondent with lack of diligence (RPC 1.3),

failure to communicate with a client (RPC 1.4(a)), and failure to promptly deliver funds to a client (RPC 1.15(b)).

According to the second count, on November 30, 2004, the OAE conducted a demand audit of respondent's trust and business account records. The audit uncovered a number of recordkeeping violations, namely, respondent's failure to (1) maintain trust account receipts and disbursements books, (2) keep a running cash balance in the trust account book, (3) keep client trust ledger sheets, and (4) prepare a schedule of clients' ledger accounts and reconcile it to the bank account statement. The OAE also found that inactive trust ledger balances had remained in her trust account for "extended periods of time."

On December 14, 2004, the OAE directed respondent to submit, within forty-five days, monthly trust account reconciliations from October 2003 through November 2004, client ledger sheets, and receipts and disbursements journals for the one-year period preceding November 2004. On January 26 and May 26, 2005, respondent provided the OAE with the requested information.

According to the complaint, respondent's records established:

A. In July 2003, funds were deposited into trust for client Pietrosh relating to a real estate transaction. Five checks paid from trust remained uncashed resulting in an inactive trust ledger balance of \$12,115.

B. In January 2003, funds were deposited into trust for client Cushner relating to a real estate transaction. Five checks paid from trust remained uncashed resulting in an inactive trust ledger balance of \$45.

C. In February 2003, funds were deposited into trust for client Shead relating to a real estate transaction. Five checks paid from trust remained uncashed resulting in an inactive trust ledger balance of \$300.

D. In addition, the sum of \$2,293.53 in inactive trust ledger balances remained in trust, consisting in funds owed to eleven different clients and caused by mathematical and other recordkeeping errors.

[Complaint, Second Count, ¶6.]

Based on these allegations, the second count charged respondent with failure to promptly disburse funds (RPC 1.15(b)) and failure to comply with R. 1:21-6 (RPC 1.15(d)).

In the third count of the complaint, respondent was charged with failure to cooperate with disciplinary authorities (RPC 8.1(b)) as a result of her failure, on various dates between December 23, 2003 and August 31, 2005, to (1) reply to the grievance, (2) return several telephone calls of two deputy ethics counsel and a disciplinary investigator, and (3) reply

completely to the OAE's December 14, 2004 letter within the time prescribed.

Following a review of the record, we conclude that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

The allegations of the first count establish that respondent lacked diligence, failed to communicate with her clients, and failed to promptly deliver funds to them. First, after the \$3000 was placed in escrow on March 25, 2003, respondent failed to return her clients' telephone calls seeking her assistance in resolving the dispute with the seller. Second, after the parties to the lawsuit reached a settlement on December 5, 2003, respondent did not return the Herrmanns' telephone calls until more than ten months later (October 15, 2004), at which time she requested and received a copy of the settlement agreement. She then waited five months to disburse the funds. Respondent's conduct violated RPC 1.3, RPC 1.4(a), and RPC 1.15(b).

With respect to the second count, respondent's records showed that she had failed to (1) maintain trust account receipts and disbursements books, (2) keep a running cash

balance in the trust account book, (3) keep client trust ledger sheets, and (4) prepare a schedule of clients' ledger accounts and reconcile it to the bank account statement. Moreover, in fourteen matters, she had clearly failed to disburse promptly nearly \$15,000 to clients and third parties. She, therefore, violated R. 1:21-6 and RPC 1.15(d).

Finally, respondent violated RPC 8.1(b) when she repeatedly (1) failed to return telephone calls from the OAE, (2) failed to reply to correspondence from the OAE, including the grievance, and (3) failed to provide the OAE with requested documentation in a timely fashion.

There remains the quantum of discipline to be imposed for respondent's violations of RPC 1.3, RPC 1.4(a), RPC 1.15(b), RPC 1.15(d), and RPC 8.1(b). In general, attorneys who are guilty of gross neglect, lack of diligence, failure to communicate with their clients, failure to promptly deliver funds, and recordkeeping violations receive reprimands. In re Leff, 181 N.J. 333 (2004) (reprimand imposed upon attorney who failed to complete four real estate transactions, thereby displaying a pattern of neglect, lack of diligence, and failure to promptly disburse funds; the attorney also committed recordkeeping violations; ethics history included a prior reprimand in a

default matter; psychiatric condition and treatment were mitigating factors); In re Murphy, 181 N.J. 319 (2004) (reprimand imposed upon attorney who violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.15(b), RPC 1.15(d), RPC 5.5(a), and RPC 8.1(b) when, in a single real estate transaction, he failed to ensure that the purpose of an escrow was fulfilled, failed to promptly disburse escrow funds to his clients, failed to reply to his clients' requests for information, practiced law while ineligible, committed recordkeeping violations, and failed to reply to the grievance); In re Jodha, 174 N.J. 407 (2002) (reprimand imposed upon attorney who violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.15(b), and RPC 1.15(d) when he failed to fulfill post-closing requirements in a single real estate transaction, including the return of escrow funds to his client, and committed recordkeeping violations); and In re Breig, 157 N.J. 630 (1999) (reprimand imposed upon attorney bill collector who failed to promptly remit collected funds to creditor and who failed to comply with applicable recordkeeping rules).

However, we also must consider that respondent has defaulted in this case. In a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re

Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand enhanced due to default; no ethics history). We, therefore, determine to impose a censure in this matter.

We further require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
William J. O'Shaughnessy
Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

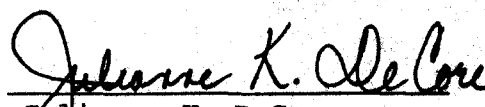
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Jill R. Epstein
Docket No. DRB 06-106

Decided: August 16, 2006

Disposition: Censure

Members	Suspension	Reprimand	Censure	Disqualified	Did not participate
O'Shaughnessy			X		
Pashman			X		
Baugh			X		
Boylan			X		
Frost			X		
Lolla			X		
Neuwirth			X		
Stanton			X		
Wissinger			X		
Total:			9		


Julianne K. DeCore
Chief Counsel