SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-265
District Docket Nos. VIII-2011-0039E, VIII-2012-0012E, VIII-2012-0037E, and VIII-2012-0042E

IN THE MATTER OF	:
DANIELLE S. LEONARD	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 15, 2015

Decided: April 16, 2015

Evelyn M. Hartmann appeared on behalf of the District VIII Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a censure, with conditions, filed by the District VIII Ethics

Committee (DEC), based on respondent's conduct in four client matters. For the reasons set forth below, we determine to impose a reprimand for respondent's violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in one client matter; RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with a client's reasonable requests for information) and RPC 1.16(d) (upon termination of representation failure to surrender papers and property to which the client is entitled) in another client matter; and RPC 8.1(b) (failure to cooperate with disciplinary authorities) in all four matters.[1] In addition, we determine to impose certain conditions on respondent, as specified below.

Respondent was admitted to the New Jersey bar in 2010. At the relevant times, she maintained an office for the practice of law in Jamesburg. She has no disciplinary history.

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[1] In two of the client matters, we find that respondent violated only RPC 8.1(b).

THE O'DONNELL GRIEVANCE (VIII-2011-0039E) (COUNTS ONE THROUGH SIX)

Respondent was charged with having violated RPC 1.1(a), RPC 1.1(b) (pattern of neglect), RPC 1.3, RPC 1.4(a) (failure to fully inform a prospective client of how, when, and where the client may communicate with the lawyer), RPC 1.4(b), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), and RPC 8.4(c).

Michelle O'Donnell, a special education teacher, testified that she and respondent first met on January 18, 2011. As a courtesy to O'Donnell, respondent would meet with her either at the Freehold Barnes and Noble or at the school where O'Donnell worked, because of the distance between respondent's office and O'Donnell's home and school.

O'Donnell had sought representation in connection with her former husband Keith's motion for a reduction in child support and increased parenting time. O'Donnell testified that she told respondent to oppose the motion and to file a cross-motion for an increase in child support, as well as the removal of Keith's child with another woman from O'Donnell's health insurance plan.

Respondent steadfastly denied that O'Donnell had asked her to file a cross-motion.

According to O'Donnell, respondent agreed to represent her for "a specific amount" of money. O'Donnell signed a retainer agreement and paid respondent $187.50. She made two additional payments: $185, on February 16, 2011, and $260, on April 11, 2011. Respondent asserted that the February 2011 payment represented funds that should have been paid at the first visit.

As discussed more fully below, respondent claimed that she suffered from various medical conditions as well as side effects of the medications she had been prescribed. According to respondent, the pain was so severe that she wanted to "jump through a window."[2] She was exhausted from lack of sleep. Nevertheless, she continued to go to the office every day and work long hours.

Although respondent's physical condition, at the time of the January 2011 initial meeting with O'Donnell, caused her to question whether she could file an opposition to the motion in a

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[2] Respondent stated that she could not take pain medication because "you can't think straight at all."

timely fashion, she "thought [she] could get it done" and that "it would work out" because it always had in the past.

O'Donnell testified that she and respondent met a second time, on February 16, 2011, at the school where O'Donnell worked. O'Donnell gave respondent copies of the paperwork relating to Keith's use of her health insurance and received from respondent "a packet to fill out," presumably, the case information statement (CIS). O'Donnell completed the CIS "right away" and returned it to respondent.

O'Donnell testified that, at the February 2011 meeting, although she and respondent discussed both the motion and the cross-motion, respondent could not review the cross-motion with her because respondent claimed that she had left it at the office. O'Donnell asserted that, despite respondent's representation that she would mail the papers to O'Donnell, in advance of the March 4, 2011 return date, she never did.

In addition to denying that she had agreed to file a cross-motion, respondent asserted that, at this second meeting, she had told O'Donnell that she would not even be able to file an opposition to Keith's motion, due to her "illness" or "illnesses." Inconsistently, respondent also testified that she had only "indicated it may be a problem" and that she did not

say "yes or no." According to respondent, O'Donnell replied that "it was all right. If I can get it done, great."

O'Donnell denied that respondent had ever told her that she could not file, or that it would be difficult for her to file, the cross-motion. According to O'Donnell, respondent did not inform her of any health issues until their third meeting, in April 2011, when she told O'Donnell that she suffered from endometriosis and that "at times she was in pain."

Contrarily, respondent testified that she had discussed her medical condition briefly with O'Donnell at either their first or second meeting and, later, in detail. According to respondent, O'Donnell told her that she felt "bad" and to let her know if there was anything she could do.

O'Donnell testified that, between her initial meeting with respondent and the March 4, 2011 return date of Keith's motion, there was not much communication between her and respondent. When they did communicate, it was mainly by text messages. This was so because O'Donnell could not make or receive telephone calls at the school and, even when she was at home, they could not communicate by phone, if her child was present. A court order prohibited the O'Donnells from discussing "any matter

concerning their child or any of the custody related divorce issues in her presence."

On March 3, 2011, a tentative decision on Keith's motion, issued by the Honorable Patricia B. Roe, P.J.F.P., was faxed to respondent. The tentative decision recited that the motion was unopposed because O'Donnell had failed to respond.

Respondent testified that, after her receipt of the decision, on March 3, 2011, she called O'Donnell and reviewed it with her on the phone. Respondent explained to O'Donnell that the decision was favorable to her because the judge had denied Keith's request for a decrease in child support. Respondent offered to attend the March 4, 2011 oral argument on the motion to request an extension to submit a reply to Keith's motion. According to respondent, O'Donnell declined her offer because the decision was in O'Donnell's favor.

O'Donnell told a different story. She testified that, at some point, respondent told her that Judge Roe "was going to a higher position." As a result, the judge had made "a proposed ruling" on Keith's motion only, which was "a good decision," but she had not ruled on the cross-motion. Yet, when O'Donnell received a copy of Judge Roe's tentative decision in the mail, she became "quite upset" because the order noted that Keith's

motion had been unopposed. Although O'Donnell conceded that the order was not unfavorable to her, she emphasized that what was "unfavorable" was the fact that the motion was unopposed, that there was no cross-motion before the court, and that respondent had continued to lead her to believe that she had filed a cross-motion that the court would entertain at another time.

Respondent testified that she believed that, after the March 4, 2011 order was entered, she had told O'Donnell that she could do nothing further for her. Thus, she considered her legal representation to have ended on that date. She never sent a letter to O'Donnell, terminating the representation.

Despite respondent's contention that her representation of O'Donnell had ended on March 4, 2011, respondent met with O'Donnell in April 2011.[3] According to O'Donnell, at that meeting, respondent told her that oral argument on O'Donnell's cross-motion would take place on May 20, 2011, that Keith had not opposed the cross-motion, that it was not necessary for O'Donnell to appear in court on May 20, 2011, and that she would keep in touch with O'Donnell on that day.

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[3] It was at this third meeting that O'Donnell gave respondent the last of three checks.

On the morning of May 20, 2011, O'Donnell texted respondent. Respondent told O'Donnell that she was in court and that she would call her later. According to O'Donnell, respondent did call her after the court appearance, at which time she announced that a Judge Jones had heard the case, that "it went very well," and that "it was mainly in [O'Donnell's] favor." O'Donnell told the hearing panel that, although respondent said that she would send a copy of the order to her, she never did. O'Donnell asserted that she asked respondent about five times for a copy of the May 20, 2011 order, and that, each time, she was assured that she would receive it. O'Donnell further testified that she sent several text messages to respondent, expressing concern that she had not received a copy of the order.[4]

O'Donnell testified that, sometime in June 2011, she called the Ocean County courthouse, at which time she was told that no papers had been filed on her behalf and that the only motion ever filed was Keith's original motion, decided on March 4,

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[4] O'Donnell testified that she did not have a complete record of all texts between her and respondent.

2011. Moreover, she learned that there was no court proceeding on May 20, 2011.

According to O'Donnell, when she told respondent about the conversation with the clerk's office, respondent retorted that each filing was assigned a different docket number and that O'Donnell had given the clerk's office the wrong number. Respondent then gave a different docket number to O'Donnell, which, O'Donnell asserted, had been "made up." Respondent denied that she told O'Donnell that she had the wrong docket number. O'Donnell testified that, although once again, respondent had promised to send her a copy of the order, she still had not received it.

O'Donnell claimed that she asked respondent, via text, "Did you even go to court for me?" Respondent answered in the affirmative. O'Donnell complained that, despite multiple additional promises from respondent, as of O'Donnell's January 21, 2014 testimony at the ethics hearing, she still had yet to receive a copy of the May 20, 2011 order.

In late June/early July 2011, O'Donnell hired another attorney, Marianna D. Pontoriero, who, in her presence, called respondent and asked for copies of the "paperwork," which respondent agreed to send "at that moment." She never did.

Respondent disputed O'Donnell's claim, stating that she had sent a copy of the O'Donnell file to both O'Donnell and Pontoriero.

For her part, respondent denied the authenticity of all the copies of the text messages that were admitted into evidence, claiming that she had not received any of them and that the produced messages were not between her and O'Donnell. Also, respondent flatly denied ever having told O'Donnell about a court date on May 20, 2011, denied having called O'Donnell to inform her of the outcome of a May 20, 2011 appearance, denied having had any discussions about a May 20, 2011 order, and denied knowledge of "any May 20th hearing," stating that there was "never" one. Respondent and O'Donnell agreed that, after O'Donnell had applied for fee arbitration, respondent refunded the $635 that O'Donnell had paid to her.[5]

THE TERANTINO GRIEVANCE (VIII-2012-0012E) (COUNT SEVEN)

After Ann Terantino filed a grievance, respondent was charged with having violated RPC 1.1(b), as well as R. 1:20-3(g)(3), which requires every attorney to "cooperate in a

[5] Respondent appeared at the fee arbitration with a full refund, which she turned over, even though O'Donnell failed to appear.

disciplinary investigation and reply in writing within ten days of receipt of a request for information." A violation of R. 1:20-3(g)(3) is also a violation of RPC 8.1(b), which prohibits an attorney from "knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority."

As seen below, respondent admitted to having failed to reply to the grievance.

THE LOPEZ GRIEVANCE (VIII-2012-0037E) (COUNTS EIGHT THROUGH TWELVE)

The formal ethics complaint charged respondent with having violated RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), RPC 1.15(b) (failure to promptly deliver to the client property that the client is entitled to receive), and R. 1:20-3(g)(3), more properly RPC 8.1(b).

Respondent and Barbara Lopez met in the fall of 2011, at the pharmacy where Lopez worked and respondent had prescriptions filled. On that day, respondent witnessed Lopez being hounded by creditors, on her cell phone. Respondent gave Lopez her business card and stated that "maybe she could help" her.

Respondent testified that Lopez called her about two weeks later and they met a few days after that, in December 2011. At

that meeting, Lopez told respondent about her financial difficulties, including her belief that the mortgage on the home that she shared with her husband, Carlos, was in default. Lopez also remarked that, now that the children were grown, she wanted a divorce, but she was not yet ready to proceed. Respondent told Lopez that she did not know whether she could help her, but asked her to bring her "financial documents" to their next meeting.

Lopez's recollection of that first meeting was a bit different. She claimed that they had discussed an "array of issues," including bankruptcy, disability, and divorce. Lopez acknowledged that respondent had told her that she could not handle a bankruptcy matter, but that she was willing to "write some letters or try to negotiate" with Lopez's creditors.

According to Lopez, she explained to respondent that she could not pay her, but respondent told her not to worry because Lopez could pay her after all her "problems [were] squared away." They had no discussion about the amount of respondent's fee.

Respondent never sent Lopez a bill. Respondent explained:

> I was doing the right thing by helping her out to get her documents organized. I thought that I was helping someone who was

> in a position of need, and I went into this profession to do just that. I wasn't providing legal services by organizing paperwork. Advising her to see a bankruptcy attorney was not legal representation. I saw her a couple times in between there, again, just generally discussing her life matters and not doing anything because she wasn't ready to do anything or there wasn't anything to be done. There was no -- nothing to charge for.
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> [5T84-9 to 19.][6]

As a result of their initial meeting, Lopez believed that respondent would prepare a complaint for divorce and work with Chase, which held the second mortgage on her home, to stop the pending foreclosure proceeding.

According to Lopez, at their first meeting, respondent stated that she had a physical ailment that was similar to "very severe osteoarthritis" and that she was in "a lot of pain." Respondent never told Lopez that this health problem could interfere with Lopez' representation.

There is no dispute that, on December 16, 2011, Lopez delivered to respondent's office a box and some bags full of papers, which contained "all kinds of bills . . . in disarray."

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[6] "5T" refers to the transcript of the March 13, 2014 ethics hearing.

Respondent testified that she spent four to five hours reviewing, sorting, and extensively organizing the papers for Lopez, in color-coded folders. It is also undisputed that respondent did not charge Lopez for doing so. At this point, according to respondent, she had only offered to help Lopez get organized, as a prerequisite to determining whether "there was any legal course of action [respondent] could help her with."

Respondent testified that, at their second meeting, in mid-January 2012, Lopez stated that she wanted to postpone filing for divorce until her younger child had finished high school. Thus, respondent was of the view that, at that point, no action was to be taken in this regard. She and Lopez did not discuss the idea of a divorce again until the end of May 2012. Even at that point, respondent asserted, Lopez had not made a decision as to whether she wanted to take that action. In short, according to respondent, Lopez never retained her to represent Lopez in a divorce action.

On January 19, 2012, Lopez sent an e-mail to respondent, expressing her desire to "make the permanent disability happen." She asked respondent what she needed to do. Lopez testified that, by that time, she had been treated by a psychiatrist for

depression for the past three to four years. She had suffered a "nervous breakdown" two years before.

The parties met next on January 27, 2012. Lopez, who was accompanied by her adult daughter, Julianna, brought additional documents. Respondent reviewed these documents with Lopez and her daughter, organizing the papers in folders. Respondent claimed that, at that meeting, she returned all of the documents to Lopez, in the folders, and that Lopez's claim to the contrary was untrue. Respondent further testified that, at that meeting, she made it clear to Lopez that she could not help her with the financial issues and advised her to see a bankruptcy attorney. Respondent believed that her involvement with Lopez's credit issues had ended. They never discussed the issue again.

Lopez acknowledged that respondent had informed her, at the January meeting, that she did not do bankruptcy work and had suggested that Lopez consult with a bankruptcy lawyer about her debt, which she did.

Lopez waffled on the issue of whether she wanted respondent to file a divorce complaint. On the one hand, she testified that respondent was going to handle her divorce. On the other hand, she acknowledged that she had informed respondent, at their January 27, 2012 meeting, that she was not ready to move

forward with the divorce and that she wanted to wait until after the school year ended to pursue it.

Respondent testified that, prior to the January 27, 2012 meeting, Lopez had been injured in a fall at work. Respondent described what transpired at the January 2012 meeting:

> So when she came to that meeting, instead of spending the whole time going over the organized files, she wanted to talk about the disability issue. And so we talked about -- I went on the New Jersey disability website, and I printed out the sheet that says what you need to bring for a claim. We went through it step-by-step as to what documents and other related issues that she was going to need to collect before she could go online and filled [sic] out. So that's what we talked about that day. And I gave her -- she took with her that day those green, red, black, blue, two blue folders, and yellow. And there were documents that remained in my possession in my office as well. The folders were the issues that I thought she needed to take elsewhere related to, I said bankruptcy, because I didn't know what else to do for her.
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> [3T172-10 to 23.][7]

According to respondent, she told Lopez that she had no experience with disability matters and that she could not assist her with her claim; Lopez had been represented by counsel in a

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[7] "3T" refers to the transcript of the February 25, 2014 ethics hearing.

previous disability claim and told respondent that she would "go to him." Thus, respondent testified, there was no work for her to do on any disability issue.

Lopez denied that respondent had told her that she had no experience handling disability matters and had suggested that Lopez contact the State of New Jersey, request the forms, and handle the matter herself. Yet, Lopez acknowledged that Julianna had taken notes at the meeting and that she had written "should file for temporary disability through New Jersey." Lopez admitted that respondent had printed out some materials from a State website and given them to her, but claimed that the papers had nothing to do with disability and that, instead, they concerned "resources for women."

Although Lopez believed that respondent was going to handle a disability claim for her, in conjunction with the divorce, she acknowledged that respondent had never stated, in writing, that she would represent her in a disability matter. Lopez further acknowledged that her disciplinary grievance against respondent was limited to seeking the return of her documents and that the grievance did not address respondent's failure to provide requested legal services.

Lopez testified that she raised the issue of fees with respondent at the late January 2012 meeting, but that, again, respondent told her not to worry about it and that Lopez could pay her $10 a month for the rest of her life.

On April 24, 2012, Lopez informed respondent, via e-mail, that she was ready to "move forward" with the divorce and requested a meeting. According to respondent, they met on May 8, 2012, at which point Lopez and Carlos authorized respondent to talk to Chase on their behalf about the second mortgage. Lopez was present when respondent spoke to a Chase representative on the phone, presumably during that meeting. Although Lopez and Carlos each signed an authorization for Chase to release certain information to respondent, Lopez never received any information from respondent concerning her communications with Chase.

Lopez testified that, during their May 2012 meeting, respondent stated that her brother had relapsed and returned to rehab and that her father "was really sick." Consequently, respondent was "very stressed out." Nevertheless, according to Lopez, respondent gave her no indication that these problems would adversely affect the work respondent was undertaking on her behalf, either presently or in the future. She had nothing

in writing from respondent, stating that she would proceed with a divorce action on her behalf.

Respondent testified that, by the time that Lopez returned the signed Chase releases, she was no longer "attending the office on a regular basis" but, she added, "everything in regards to the noncommunication is untrue." Respondent stated that her aunt, Deborah Swanner, her secretary at the time, had asked her to pick up some original documents pertaining to divorce issues, which respondent still had in her possession. Respondent testified that Lopez had left those documents with her because "there [was] a hoarding issue" in the Lopez home.

Respondent testified that Swanner's calls to Lopez were reflected in a call log that Swanner was required to keep, as part of her job duties. According to the log, Swanner called and left messages for Lopez, on April 24, May 1, and May 8, 2012. Lopez never retrieved the documents.

Swanner confirmed that, at respondent's instruction, she had made the calls to Lopez that were reflected on the call log. Swanner believed that she had spoken to Lopez, during the first call. In the final two calls to Lopez, Swanner had left a message requesting that she come to the office and pick up her

papers. She did not know whether Lopez had picked them up, after she had left this final message.

Lopez denied that she had ever received any such calls, but conceded that she did not have a "clear recollection" of every call that she had received from respondent's office.

Lopez testified that her next meeting with respondent took place in mid-June 2012, at which time she expected to sign the "divorce papers," so that Carlos could be served by the end of the month. When Lopez arrived at respondent's office, however, the door was locked and no one was there. Lopez remained outside, repeatedly calling respondent's office and cell phone numbers. No one answered or returned her calls. After about thirty minutes, Lopez left.

Between the dates of the June 2012 appointment and the July 19, 2012 grievance, Lopez continually called both of respondent's telephone numbers, sent her e-mails, and even left notes in her residential mailbox. When Lopez filed the grievance, her only complaint was that respondent had not returned her papers to her.

Respondent acknowledged that she did not keep the June 2012 appointment and that there was a delay in returning Lopez's papers to her. According to respondent, Lopez was unable to

contact her, during the period identified in the grievance, because respondent "was entirely incapable of functioning" at the time and, therefore, was not responding to "anything or anyone in regards to the office or otherwise." Respondent acknowledged that, when the grievance was filed, she still had Lopez' papers in her possession, but explained that she had not returned them to Lopez when she "should have" because she "was not functioning when the office was closed." She offered her apologies for her conduct.

According to Lopez, respondent made only one phone call with respect to her disability claim. Otherwise, Lopez had no indication that respondent had done anything on the various issues for which she had sought respondent's assistance. Lopez testified that she received her documents from respondent, several months after she filed the grievance against her. Lopez never saw a divorce complaint, correspondence with Chase, or disability applications.

As of Lopez's February 25, 2014 testimony in this matter, she was still married to Carlos, having decided against pursuing a divorce. She considered the attorney-client relationship with respondent terminated in June 2012, "[w]hen [respondent] didn't respond to my phone calls." She reiterated that, in her

grievance, she did not complain about respondent's failure to provide legal services.

Respondent did not dispute that she was served with the grievance in July or August 2012. She acknowledged that she did not submit a reply, but asserted that her inaction was not intentional, because she was not reviewing her mail at the time.

THE ROSENTHAL GRIEVANCE (VIII-2012-0042E) (COUNTS THIRTEEN THROUGH SIXTEEN)

Respondent was charged with having violated RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a) and (b), RPC 8.4(c), and R. 1:20-3(g)(3), more properly RPC 8.1(b).

On February 9, 2013, grievant Mark Rosenthal, the stepfather of respondent's client, Meghan Phillips, Rosenthal's wife Marie and Meghan met with respondent, at her office, to discuss a custody dispute between Meghan and her infant son's father, Eric Winter. Winter had a history of drug addiction, was a violent offender, and had been to jail "multiple times" for weapons and drug offenses. Rosenthal sought respondent's services because he and Marie feared for Meghan's and the infant's well-being.

At the February 2012 meeting, respondent and Meghan signed a retainer agreement. According to Rosenthal, respondent stated that her fee was $250 an hour. She requested a $500 retainer, which Rosenthal paid on Meghan's behalf, as she was not working at the time. With respect to future payments, respondent stated that she would "work with" Meghan. As far as Rosenthal understood, however, respondent never billed for any fees in excess of that first $500.

Rosenthal testified that, although respondent had agreed to handle the matter, "it was left pretty open at that juncture as to when she would begin" to work on it. Among other things, respondent required additional information, which Meghan provided to her. According to Rosenthal, at that meeting, respondent made no mention of any health or personal problems that could interfere with her ability to handle the custody case.

Respondent testified that she represented Meghan from the spring to June 2012, when Meghan was treated for her own drug addiction. Respondent further testified that, at her first meeting with Meghan and her parents, she had told Rosenthal that, despite his payment of the fee, she represented Meghan, who would make all of the decisions and to whom respondent's

communications would be directed. Respondent stated that Rosenthal had accepted that condition.

According to respondent, the representation involved seeking a determination of paternity for Meghan's son and, after paternity was confirmed, seeking child support payments from the father. When Meghan returned the signed retainer agreement to respondent, respondent gave her a written list of documents that she needed to "file anything for her in the future in regards to paternity," including a case information statement. Respondent asserted that Meghan provided some, but not all, of the documents to her.

Rosenthal testified that, after the initial meeting, he and his family met with respondent once, at her office, and two to three times, at the Rosenthal home. Rosenthal communicated with respondent mostly because he "was speaking for Megan [sic] a lot." Although respondent was fairly communicative "at the beginning," as time went on, days would pass without hearing from her. Rosenthal complained that it was difficult to communicate with respondent. Although messages were left with Swanner and on respondent's cell phone, she did not return the calls. Further, according to Rosenthal, respondent often sent

text messages to Meghan, stating that she would call her, but she never did.

Rosenthal testified that respondent informed Meghan that the custody dispute would take place in court in April 2012. Rosenthal and Marie took time off from work so that he could drive Meghan, who did not have a driver's license, while Marie stayed home with Meghan's baby.

When Rosenthal and Meghan arrived at the intake room in the courthouse, respondent was not there and "no one knew of the case." Rosenthal called respondent, who stated that she was running late and instructed them to "[j]ust stay there." By the time respondent arrived, Rosenthal and Meghan had learned that Winter had been granted an adjournment of the proceeding.

Sometime after this court appearance, respondent met with Rosenthal, Marie, and Meghan, at the Rosenthal home. Because Meghan did not drive, respondent had volunteered to meet with the family there, an act of kindness that, Rosenthal stated, he appreciated.

Sometime after this meeting, Meghan told the Rosenthals that a second court date was scheduled for June 22, 2012. Again, they took a vacation day from work so that Rosenthal

could drive Meghan to the courthouse and Marie could be home with the child.

As before, no one at the courthouse knew about the case, which had not been scheduled for that date. Indeed, no pleadings had even been filed. After Rosenthal made a number of attempts to contact respondent, she finally replied, by text message, apologizing and stating that she was at a hearing, in Ocean County, in her own divorce matter. She also offered to arrange child care and Meghan's transportation to the courthouse when the case was scheduled for court.

Rosenthal testified that he and Meghan had emphasized to respondent how upset they were. She agreed to meet with them at her office, later that day, which she did. She did not provide them with copies of papers pertaining to the court matter and they did not request copies. She did not tell them that there would be another court date.

According to respondent, Rosenthal had asked her to "check in" on the proceeding. Although respondent went to the courtroom, she was barred from entering because the proceeding was "a closed session." Although the record is not clear, respondent's position appears to be that she did not tell Meghan or Rosenthal that there was a June 22, 2012 court date. The

record is silent about whether she offered an explanation for not having filed any pleadings.

At some point after the June 22, 2012 meeting, respondent became unreachable. Swanner no longer worked for her and the voice-mail box was full. Rosenthal resorted to leaving notes in the mailbox outside respondent's office, begging her to contact him, to no avail. This went on for about two months. Finally, Rosenthal looked up respondent's parents' address on line and contacted them. They gave him respondent's cell phone number.

Although Rosenthal called respondent on her cell phone, she did not answer. He then sent her text messages. When she finally replied, after several weeks, respondent told Rosenthal that she was going through a divorce and that she would "regain the office" and contact him.

When Rosenthal met with respondent, at the end of June, she did not mention any health problems that were interfering with her ability to represent Meghan. However, Rosenthal testified that respondent had mentioned to Marie that she "had some type of chronic illness" and that her father had cancer.

Respondent's version of events contained many details not mentioned by Rosenthal. She testified that, because Meghan was anxious for the paternity determination, respondent had arranged

for one through a private company, which had established Winter's paternity. According to respondent, about three weeks after she had given Meghan "the document," Meghan "started engaging and conversing with [Winter] on a regular basis." Respondent knew about these conversations, because Meghan was "constantly calling the office, and informing me of all the things that he was saying and not saying, and the threats that he was making, and all of these allegations." Eventually, Meghan was "sucked back into" a relationship with Winter, which was "very negative," and she returned to using drugs.

Respondent testified that she made it "very clear" to Meghan and the Rosenthals that nothing could be filed until the paternity results came back. Thus, she claimed, there could not have been a court date in either March or April 2012, because the test results had not yet been received. She denied ever telling Meghan of two different court dates, pointing out that the paternity results had not been returned.[8]

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[8] Swanner identified the record of a call that she made to Meghan on May 8, 2012, at respondent's instruction, informing her that the DNA test results would be sent to her and that "there will be no court date until we get the results."

Respondent testified that, in approximately June 2012, Meghan adamantly expressed to respondent her intention not to pursue any further action against Winter for child support or parenting time "because they were essentially together." Thus, according to respondent, there was nothing left for her to do on Meghan's behalf, at this point. Further, it was at this time that Meghan's mother had told her that Meghan had returned to her drug use.

Respondent claimed that she communicated regularly with Meghan about the status of the case and, on one occasion, communicated with Meghan's parents, who dropped things off and picked things up from her office, because Meghan did not have a driver's license.

Rosenthal acknowledged that respondent had taken care of the paternity issue between Meghan and Winter. He conceded that respondent and Meghan had had conversations to which he was not privy and that he had been unaware that Meghan had told respondent that she no longer wished to pursue the paternity issue, after the results of the test.

Respondent described the work that she had done on Meghan's behalf as follows:

> Well, it wasn't just sending her off to a DNA testing facility. It was researching on the amount of time that it would take to go through the court proceedings to determine paternity versus researching how long it would take to go through a private company, sitting down with the clients discussing those options with them, finding one of those companies, setting up times for them to go to the facility, also going, sending out the documents that she needed to file for a support order, and paternity and parenting time, reviewing those documents and that's all I had done and so forth.
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> [5T60-3 to 14.]

Although respondent had prepared a bill for Meghan, respondent did not believe that it had ever been sent to her, because "there was no way to locate her at the time." She did not send a bill to Rosenthal. She acknowledged that Rosenthal had made attempts to contact her, in May 2012, but stated that she "just wasn't capable of getting into the building at the time" or returning any phone calls.

On September 11, 2012, the day after Meghan had relapsed into drug use, a state agency awarded custody of the child to the Rosenthals. At the Rosenthals' request, respondent wrote a letter to Marie's employer, on Marie's behalf, so that Marie would be afforded the time off from work to care for the child.

Respondent acknowledged that she did not reply to Rosenthal's grievance, thereby failing to cooperate with disciplinary authorities.

* * *

As stated previously, respondent was charged with having failed to cooperate with the DEC in all four matters. With respect to the O'Donnell matter, respondent testified that she believed that she had fully cooperated "in every way required." In the Terantino matter, respondent acknowledged receipt of the grievance, but denied that she had chosen to ignore it, claiming instead that it had been lost in a "shuffle of paperwork." Thus, she added, her failure to submit a written reply was "unintentional."

With respect to the Lopez matter, respondent did not dispute that she was served with the grievance in July or August 2012. She acknowledged that she did not submit a reply to it or the Rosenthal grievance, asserting that her inaction was not intentional, because she was no longer reviewing her mail, at the time. Indeed, she had been locked out of her office for nonpayment of rent and, therefore, did not have access to the building to obtain her mail. Her husband terminated her cell phone service, the business phone was disconnected, and the

website was inactive. As a result, she did not receive telephone calls or e-mails.

According to respondent, her failure to reply to the DEC's inquiries was not intentional. She explained that she "wasn't responding to [her] life or anybody else for that matter" and apologized for her failure to cooperate with the DEC investigation. Although she stated that there were reasons for her inaction, she noted that those issues did not "negate what happened" and that she was "trying to ensure in every way possible" that it would not happen again.

* * *

We now turn to respondent's background information, which she offered both in defense and mitigation of the charges.

At age fifteen, respondent joined the local EMT squad. She became licensed at age sixteen, at which point she became the Thursday night crew chief, on a shift that ran from 7 p.m. through 7 a.m. Friday. She did this throughout high school and when she was home from college.

Also at age fifteen, respondent was certified in outdoor emergency care and joined the National Ski Patrol as a volunteer. In college, she volunteered at a food bank at least twice a week and participated in a program for senior citizens.

Respondent was an extremely driven person, according to her mother, Susan Leonard (Mrs. Leonard). For example, respondent completed law school in two years. On January 1, 2011, shortly after she passed the New Jersey bar examination, she planned to open a law practice with her fiancé, Matthew Major, whom she married in March of that year. However, just after respondent and Major signed the lease, in December 2010, he dropped out of the venture, in order to work for her family's lumber business. Respondent determined to proceed alone.

Although respondent had no legal experience when she opened her law office, she believed that, if she put in the "time and effort" and "hard work and dedication," she could succeed in running a practice and in making a difference in people's lives. Respondent testified that she truly believed that, if she tried hard enough, she could do anything.

Respondent was besieged by debilitating health problems. These conditions, according to respondent, affected her ability to represent some of the clients involved in this ethics proceeding. Specifically, at the age of fourteen or fifteen, respondent was diagnosed with Ehlers-Danlos Syndrome (EDS), a connective tissue disorder, which caused her joints to subluxate and dislocate. For example, if she raised her hand, the back of

her shoulder would dislocate. Respondent explained that the daily subluxations and dislocations had caused the collagen between the joints to dissipate, resulting in arthritis. Respondent described EDS as "extremely painful" and debilitating. During a flare-up, for example, her hands would become very swollen, like those of people with rheumatoid arthritis, and she could "hardly move them." There is no medication for EDS.

Respondent testified that a rheumatologist treats her for EDS, as well as for another condition called Ankylosing Spondylitis (AS). AS is a form of arthritis that primarily affects the spine, although other joints may be affected. It causes inflammation of the spinal joints, which can result in "severe, chronic pain and discomfort." She was diagnosed with AS in 2010, just before she took the bar examination.

According to respondent, the pain caused by AS is "tolerable," except during flare-ups, when it becomes "unbearable." To treat her AS, respondent took drugs that not only depleted her immune system, but produced other side effects, including gout and lesions. She was forced to discontinue their use.

By the time respondent opened her law office, in January 2011, she had learned to cope with the EDS, but not the AS. According to respondent, EDS and AS work against each other, in that a flare-up of one will trigger an episode of the other. She described managing the pain from these conditions as "a learning process."

In addition to suffering from EDS and AS, respondent was diagnosed with endometriosis, during her senior year of college. For this condition, she once took a drug called Lupron Depot, which depleted all of her hormones in one month, causing her to suffer from vomiting, diarrhea, hot flashes, nausea, insomnia, and pain for the subsequent five months.

Finally, just after respondent opened her law office, in January 2011, a series of personal tragedies took place, leading to a bout with major depressive disorder, in 2012. Specifically, her brother relapsed and began using drugs again. In January 2012, her father was diagnosed with stage four colon cancer. He underwent six months of chemotherapy, but, about a month-and-a-half after treatment ended, the cancer metastasized to his lungs and liver.

By the time of her father's cancer diagnosis, respondent's brother was heavily involved with drugs. According to

respondent, because the entire family depended on the business for its survival and because her brother was being groomed to lead the company, she "felt obligated to step in in every sense of [sic] way to keep the family together." She became her brother's caretaker, taking him dinner and picking him up from locations where he had passed out. She lived in fear that he would overdose and die.

In April 2012, respondent's husband left the marriage. Consequently, respondent "shut off," could not function "in any way," and did not go into the office. By mid-May 2012, she was incapacitated by the depression and had stopped practicing law. As shown below, she is receiving regular treatment for her depression and is involved with the New Jersey Lawyers Assistance Program.

Respondent contended that, at the relevant times, she was suffering extensively from her physical and family problems. Mrs. Leonard, offered a synopsis of respondent's breakdown and recovery. According to Mrs. Leonard, her son's drug addiction, which brought respondent "to her knees" and "made [her] an emotional wreck," interfered with respondent's ability to do her work. Similarly, Mr. Leonard's cancer diagnosis was "very, very difficult" for respondent.

Mrs. Leonard described what she referred to as respondent's "little fall from the cloud":

> When we did step in, it was because she was completely debilitated. She wasn't answering the phone. This was a girl that called her mother and father every day. My husband used to tease I can afford law school, I can't afford the phone bill, you know, if she had time. We actually, at one point, had to break into her apartment. She was just not -- I believe she had a breakdown. And we should have seen it coming. And we did not. And we have to live with that, and you know, everything in her life was organized and pristine, everything about her from her car to her apartment to her person, to sending cards to people. She would acknowledge -- she'd meet people and hear about something and she'd write them a note if they were having a bad time, and it went from that to not being able to get off the couch. She was -- she didn't eat, she didn't sleep, she didn't take a shower. It was terrible.
>
> [4T52-16.][9]

According to Mrs. Leonard, respondent's apartment looked as if it had been burglarized. She was sleeping on the sofa; nothing had been put away; there was no food; the mail had piled up in her mailbox; and the mail that she had brought inside was unopened. She told the Leonards to go away and that she did not

[9] "4T" refers to the transcript of the March 11, 2014 ethics hearing.

care about anything. They removed her from the apartment, took her home, and called the family doctor. That doctor referred her to psychologist Elissa Koplik, who saw her the following morning. According to Mrs. Leonard, Dr. Koplik referred respondent to psychiatrist Shannon Parks because respondent had "the worst depression she's ever seen in her practice and she didn't feel capable of handling it."

According to respondent, Dr. Koplik diagnosed her with major depressive disorder, anxiety, and Attention Deficit Hyperactivity Disorder (ADHD). Dr. Parks' diagnoses were generalized anxiety disorder, major depressive disorder, and "recurrent, moderate" ADHD. Dr. Parks prescribed medication and continued to see respondent through October 1, 2013.

As of the date of Mrs. Leonard's testimony, March 11, 2014, respondent was working and had moved into a different apartment. She was performing all daily functions required in life, including opening her mail and paying her bills. In short, Mrs. Leonard stated, "I have complete confidence that she's back." Moreover, Mrs. Leonard believed that respondent now has the ability to recognize when she needs help and to ask for it.

Respondent testified that, after opening her law office, she quickly became overwhelmed by the practice of law. She

often worked from 6 a.m. until after midnight, at least six days a week. She kept an air mattress at her office. Her AS began to flare up, in late 2011, and continued, sporadically, throughout 2012, due to the stress caused by her father's cancer and the breakdown of her marriage. When these events occurred, respondent was unable to sleep because of pain, leaving her exhausted and unable to concentrate. On some days, she could not get out of bed. On one particular day, respondent's back had "frozen." Her brother had to break into her apartment to get her out of the bed. She reiterated that she refused to take pain medication, because she could not practice law with impaired cognition.

During this period of time, respondent began to take injections of Humira and Simponi for the AS. These drugs had "the same side effects," presumably pain and difficulty sleeping. These problems were taking place during her representation of Meghan and Lopez.

Respondent testified that she first met with Nancy Stek, Associate Director of the New Jersey Lawyers' Assistance Program (NJLAP), in December 2013. Together with respondent's therapist and psychologist, they developed a personalized recovery program. By February 14, 2014, Stek had observed that "[t]he

changes you have made just in the past two months are noticeable and significant and speak to your commitment to growth and positive change."

As to her conduct during the investigation of the disciplinary matters, respondent testified as follows:

> I'd like to apologize for the delay and all of the problems it has caused thus far. My unresponsiveness and my inability to be contacted or reached, and all the extra work that it's caused for everyone involved, I'm sorry. I am doing the very best I can to ensure that it doesn't ever happen again and to make right of what the mess I made, [sic] and that's it.
>
> [3T101-8 to 15.]

As of respondent's February 2014 testimony, she was seeing a therapist and a psychologist, participating in some NJLAP groups, and attending AS support group meetings. Further, she was treated by a specialist for ovarian tumors and endometriosis.

Respondent testified that, since July 2013, she has been employed as assistant manager at a Millstone restaurant. She testified that she hopes to practice law again and that she believes that she is able to do so.

Respondent added that, although she continues to suffer from chronic pain, she is now able to handle "the emotional side

of it that [she] didn't realize existed." With the assistance of her therapist and the NJLAP, she has been able to voice her concerns, which has helped her to face the reality of her medical conditions and her future.

The DEC allowed the presenter to amend the complaint to include an eighteenth count, alleging failure to cooperate in the Terantino, Lopez, and Rosenthal matters, on the ground that respondent had admitted, in her answer, that she had failed to cooperate with the DEC investigation of those grievances.

The DEC issued a lengthy hearing panel report, which we now summarize.

THE O'DONNELL MATTER

In this matter, the DEC found that respondent neither opposed Keith O'Donnell's motion nor filed a cross-motion on O'Donnell's behalf. The DEC rejected respondent's claim that, by early March 2011, she was physically unable to work on O'Donnell's case. The DEC pointed out that, on April 11, 2011, respondent had traveled from Jamesburg to Freehold to meet with O'Donnell and collect a $260 check from her.

The DEC found that O'Donnell's testimony was "very credible," whereas respondent's was "highly incredible." In

support of this conclusion, the DEC pointed to O'Donnell's claim that respondent had informed her that Judge Roe had not considered O'Donnell's cross-motion because she had been promoted to the Appellate Division. According to the DEC, it was extremely unlikely that O'Donnell would have known of Judge Roe's elevation to the Appellate Division, unless respondent had told her so. Thus, the DEC was clearly convinced that respondent had failed to file "any papers" on O'Donnell's behalf and that she had misled O'Donnell into believing that she had filed the "papers," presumably the opposition to Keith's motion and the cross-motion, and that the matter would eventually be heard.

The DEC further found that respondent lied to O'Donnell about the May 20, 2011 hearing date, the favorable resolution of most of the issues, and O'Donnell's future receipt, in the mail, of a copy of the order, which turned out not to exist.

The DEC believed O'Donnell's testimony that, prior to the fictitious May 20, 2011 hearing, she had met with respondent, who had shown her "a new motion" that Keith had filed. The DEC cited O'Donnell's receipt of a summons several days later, as "substantiation of her testimony." Further, the DEC rejected respondent's claim that she had that motion couriered to

O'Donnell's new attorney. The DEC cited the cost of delivery ($50) versus the total fee that respondent received for the representation ($650) and O'Donnell's testimony that her new lawyer had to obtain the papers from Keith.

In support of its conclusion that O'Donnell's testimony was "highly credible," the DEC noted that she had no reason to lie, as she had received a full refund of the fee paid to respondent and had not been "actually harmed by [respondent]'s failure to file any documents on her behalf, nor by [respondent]'s fabrication of information." The DEC rejected respondent's claim that her failure to act was caused by the pain from her medical conditions, finding instead that respondent "simply did not understand the process by which an opposition and cross motion for child support modification and other relief are to be filed." "[O]ne misrepresentation led to another until finally [respondent] had no recourse but to simply stop communicating with . . . O'Donnell and attempt to ignore her."

The DEC found that respondent had violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 8.4(c), in the O'Donnell matter.

THE LOPEZ MATTER

In this matter, the DEC found that, despite the absence of a signed retainer agreement and the payment of any money to respondent, there was an attorney-client relationship between her and Lopez. Because, however, of the absence of clear and convincing evidence that Lopez was "ever reasonably under the impression" that respondent would perform any specific work on her behalf, the DEC dismissed the gross neglect and lack of diligence charges. In addition to the failure-to-cooperate charge, which respondent admitted, the DEC sustained the RPC 1.4(b) and RPC 1.15(b) charges, albeit "with great mitigation," due to respondent's "illness and eviction."

THE ROSENTHAL MATTER

The DEC noted that the fact pattern in this client matter was "strikingly similar" to that of the O'Donnell matter, that is, respondent's alleged failure to file papers, followed by misrepresentations to conceal that inaction. Although the DEC remarked that the June 2012 court date was a fiction, it also noted respondent's testimony that, by that time, her representation of Meghan had ended. Because Rosenthal, not Meghan, was the only witness to testify, the DEC could not

"speculate on what the communications were between Meghan Phillips and the Respondent with regard to her representation." Thus, the DEC dismissed all charges in this matter, except for RPC 8.1(b), which respondent admitted.

THE TERANTINO MATTER

The DEC noted respondent's admission, in her answer, that she had failed to cooperate with the DEC in this matter. Remarking that she had failed to cooperate with disciplinary authorities in all four matters, the DEC found that this conduct was mitigated by her major depressive disorder.

Altogether, the DEC found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 8.4(c) in the O'Donnell matter; RPC 1.4(b) and RPC 1.15(b) in the Lopez matter; and RPC 8.1(b) in all four client matters.

The DEC found the following mitigating factors: (1) respondent's youth and inexperience, (2) the absence of a disciplinary history, (3) her service to the community, (4) the lack of harm to any client, and (5) the return of the clients' fees. In aggravation, the DEC noted respondent's "campaign to conceal her incompetence from [O'Donnell] at the expense of her integrity."

The DEC recommended the imposition of a censure, making the following observation:

> It is troubling to the panel (and especially our layperson, Mr. Gross) that [respondent] intends to navigate back into the world of the practice of law without any safeguards in place to ensure that she does not find herself in the same position of now knowing what to do and then feeling trapped and misleading a client to conceal her incompetence again.
>
> [HPR27.][10]

Thus, the DEC recommended that the following conditions be imposed on respondent:

> 1. That she submit to psychiatric evaluation and/or submit reports of her treating psychiatrist/psychologist no less than every six months to verify that she is fit to engage in the practice of law.
>
> 2. That she be required to work in a firm setting of at least two other attorneys for a period of two years or that she be monitored by another attorney who must give prior approval before she takes any new case for a period of two years. Such supervising attorney shall have access to her files and calendars and must meet with her on the status of her cases no less than once every 30 days.

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[10] "HPR" refers to the hearing panel report, dated August 4, 2014.

3. That she be required to continue her participation in the NJLAP.

4. That she be required to take Continuing Legal Education courses in excess of her required 24 credits within 24 months that relate to her area of practice as well as ethics courses of an additional 10 credits per year for the next three years.

[HPR28-HPR29.]

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

THE O'DONNELL MATTER

As the DEC properly found, respondent violated RPC 1.1(a), RPC 1.3, and RPC 8.4(c) in this matter. It should be noted that the DEC found O'Donnell's testimony highly credible and respondent's testimony highly incredible. Because the DEC had the opportunity to observe the demeanor of the witnesses, the DEC was in a better position to assess their credibility. We, therefore, defer to the DEC with respect to "those intangible aspects of the case not transmitted by the written record, such as, witness credibility . . . ." Dolson v. Anastasia, 55 N.J. 2, 7 (1969). Because the DEC "hears the case, sees and observes the witnesses, and [hears] them testify, it has a better

perspective than a reviewing [tribunal] in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). Accord In re Alcantara, 144 N.J. 257, 264 (1995).

Respondent admitted that she had agreed to file a reply to Keith's motion, despite her own reservations about whether she had the physical capacity to do so. She failed to request an adjournment of the motion to allow her additional time to complete that task. She then failed to submit an objection to the motion, which was deemed unopposed. Her inaction constituted gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3. She also violated these rules with respect to the cross-motion that she never filed.

No evidence, however, substantiated the failure-to-communicate charges against respondent. To the contrary, the evidence established that she and O'Donnell communicated regularly by text messaging each other. Thus, we dismiss all three RPC 1.4 charges.

As to respondent's failure to comply with O'Donnell's requests for non-existent orders, that conduct is subsumed within RPC 8.4(c), a violation detailed below, as respondent's

noncompliance stemmed from the fact that the orders did not exist, rather than from her procrastination or avoidance.

Finally, there was ample evidence supporting the RPC 8.4(c) charge in this matter. As the DEC found, respondent made the following misrepresentations to O'Donnell: (1) that she had filed a cross-motion, (2) that the cross-motion had not been decided with Keith's motion, due to Judge Roe's promotion, (3) that the cross-motion would be heard on May 20, 2011, (4) that she had attended the May 20, 2011 oral argument, (5) that Judge Jones had rendered a decision favorable to O'Donnell, (6) that the motion and cross-motion had different docket numbers (she provided a fabricated docket number to O'Donnell), and (7) that she would send or had sent a copy of the order to O'Donnell.

To conclude, respondent violated RPC 1.1(a), RPC 1.3, and RPC 8.4(c) in the O'Donnell matter.

THE TERANTINO MATTER

As stated previously, respondent admitted to having failed to reply to the grievance, a violation of RPC 8.1(b).

THE LOPEZ MATTER

Although the DEC found that an attorney-client relationship had been established between respondent and Lopez, it dismissed the gross neglect and lack of diligence charges, because Lopez was not "reasonably under the impression that any specific work would be performed" by respondent on her behalf. The determination that there was an attorney-client relationship between respondent and Lopez permitted the DEC to find that respondent had violated RPC 1.4(b) and RPC 1.15(b), when she failed to return Lopez's telephone calls and to return her papers to her.

The DEC rightly determined that, despite the absence of a signed retainer agreement, an attorney-client relationship existed in this matter. "It is clear that an attorney must affirmatively accept a professional undertaking before the attorney-client relationship can attach, whether his acceptance be by speech, writing, or inferred from conduct." Procanik by Procanik v. Cillo, 226 N.J. Super. 132, 146 (App. Div.), certif. den. 113 N.J. 357 (1988) (finding that an attorney who declines a case and chooses to offer reasons for doing so need not "give his full, complete, and informed judgment," but rather need only say what is "professionally reasonable in the circumstances).

This is not to say, however, that "threshold communications between attorney and prospective client do not impose certain obligations upon the attorney." Ibid. An attorney's fiduciary obligation "extends to 'persons who, although not strictly clients, he has or should have reason to believe rely on him.'" In re Gavel, 22 N.J. 248, 265 (1956). Accord In re Schwartz, 99 N.J. 510, 517 (1985), and In re Hurd, 69 N.J. 316, 330 (1976).

In this case, the record clearly and convincingly establishes that Lopez relied on respondent to review her papers and to provide legal counsel to her about her financial, marital, and disability issues. Indeed, Lopez turned over to respondent a large volume of documents for her to review and determine what action, if any, could be taken on Lopez's behalf.

As to the charged violations of RPC 1.1(a) and RPC 1.3, as the DEC found, the evidence did not clearly and convincingly demonstrate that Lopez had any reasonable expectation that respondent would file a bankruptcy petition, a disability claim, or a complaint for divorce on her behalf. Lopez agreed that respondent had informed her that she could not handle a bankruptcy matter and suggested that she seek another lawyer in that regard, which she did. Further, there was an absence of clear and convincing evidence that Lopez truly believed that

respondent would file a disability claim on her behalf and Lopez's testimony demonstrated her ambivalence about filing for divorce, which, even as of her testimony, she had not done. Finally, there is the issue of Lopez's grievance, which contained none of these claims but, rather, was limited to respondent's retention of her documents. Thus, the DEC was correct in its determination to dismiss the gross neglect and lack of diligence charges.

The DEC also properly found that respondent failed to communicate with Lopez and failed to return her documents to her. Respondent admitted having failed to appear for a scheduled appointment with Lopez, in mid-June 2012. She also admitted to having delayed returning Lopez's papers to her. The evidence also demonstrated that respondent failed to return Lopez's multiple calls, made between June and July 19, 2012. Thus, respondent violated RPC 1.4(b) and RPC 1.15(b).

THE ROSENTHAL MATTER

This matter should more properly be referred to as the Meghan Phillips matter because she, not Rosenthal, was respondent's client. The DEC was correct to dismiss all charges

because Meghan did not testify and, therefore, respondent's testimony was unrebutted.

Because there was no evidence to sustain the charge of pattern of neglect, we dismiss the charged violation of RPC 1.1(b).

In summary, respondent violated RPC 1.1(a), RPC 1.3, and RPC 8.4(c) in one matter (O'Donnell), RPC 1.4(b) and RPC 1.15(b) in another matter (Lopez), and RPC 8.1(b) in all four matters.

There remains for determination the appropriate measure of discipline to impose on respondent for her unethical conduct.

A misrepresentation to a client usually results in the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In the Matter of Clifford B. Singer, DRB 10-033 (July 1, 2010) (attorney misrepresented to client that he was working on settling her case when, in fact, the matter had been dismissed for failure to prosecute; the attorney also negligently misappropriated client funds in another matter as a result of his failure to reconcile his trust account for several years; prior reprimand); 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 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, we begin with a reprimand, due to the misrepresentations that respondent made in the O'Donnell matter. In our view, the less serious offenses of gross neglect, lack of diligence, and failure to communicate with the client violations do not justify an enhancement of this threshold measure of discipline.

We consider, too, respondent's failure to cooperate with the DEC. Generally, failure to cooperate with a DEC's

investigation results in an admonition, if, as here, the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (failure to cooperate with an ethics committee's attempts to obtain information about the attorney's representation of a client; remaining charges were dismissed); 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 finally retaining 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 DEC 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 aggravation, under RPC 1.16(a)(2), respondent had an obligation to withdraw from the representation of her clients at the point when her "physical or mental condition materially impair[ed] her ability to represent [them]." Moreover, her conduct was perilously close to abandonment of Lopez.

Juxtaposed against the aggravating factors is strong mitigation. First, despite the DEC's view on respondent's failure to produce medical testimony, it is clear that she suffers from some serious medical conditions that cause tremendous pain. Second, respondent has dedicated her life to assisting others, notwithstanding these difficulties, by soldiering on, despite her afflictions. Thus, when she opened her law office, she believed that she would be able to succeed, as she had in the past. Her intentions were good. Third, respondent was under tremendous stress, not only from the pain, but from the trauma caused by a family life in shambles, that is, her father's cancer, her brother's drug use, and her divorce. Fourth, it is clear that respondent went out of her way to accommodate her clients. For example, instead of O'Donnell having to travel forty minutes to respondent's office,

respondent traveled the forty minutes to meet O'Donnell, where it was convenient for the client. She also spent hours organizing Lopez's heap of documents, free of charge.

Finally, respondent has an unblemished disciplinary history and she continues in treatment for her medical issues, for which she sought help.

Because the mitigating factors far outweigh those in aggravation, we find that a reprimand is sufficient discipline for the totality of respondent's conduct. Given her mental breakdown and her lack of experience, however, we impose the following conditions:

> (1) if respondent wishes to practice law, she must be supervised by a proctor approved by the Office of Attorney Ethics (OAE); no proctorship will be required if she is employed by a law firm;
> (2) she must submit proof to the OAE of her continued treatment by a psychiatrist, until further order of the Court;
>
> (3) she must submit proof to the OAE of her continued participation in NJLAP, until further order of the Court; and
>
> (4) she must attend a course on law office management, as part of her mandatory CLE.

Members Gallipoli and Zmirich voted to impose a censure, agreeing with the conditions imposed by the majority. Member Rivera 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Danielle Leonard
Docket No. DRB 14-265

Argued: November 20, 2014

Decided: April 16, 2015

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark			X			
Gallipoli				X		
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich				X		
Total:			6	2		1

Ellen A. Brodsky
Chief Counsel