

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-316
District Docket No. X-05-096E

IN THE MATTER OF
KATHLEEN D. WARGO
AN ATTORNEY AT LAW

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

Decided: March 9, 2007

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 District X Ethics Committee (DEC), pursuant to R.
1:20-4(f). We determine to impose a censure.

The complaint charged respondent with gross neglect (RPC
1.1(a)); lack of diligence (RPC 1.3); failure to communicate with
a client concerning the status of the matter (RPC 1.4(a) and
(b)); failure to explain a matter to the extent necessary to
permit a client to make informed decisions about the

representation (RPC 1.4(c)); failure to deliver a client's file and to protect the client's interests upon termination of the representation (RPC 1.15(b) and RPC 1.16(d)); failure to cooperate with disciplinary authorities (RPC 8.1(b) and R. 1:20-3(g)(3)); violation of the Rules of Professional Conduct (RPC 8.4(a)); and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(b) [more properly, RPC 8.4(c)]). Respondent never replied to the grievance or to the complaint.

Respondent was admitted to the New Jersey bar in 1987. Although she has no history of permanent discipline, she was temporarily suspended on January 17, 2007. In re Wargo, 189 N.J. 126 (2007).

Service of process was proper. On August 23, 2006, the DEC secretary sent the complaint by certified and regular mail to respondent's office in Morristown, New Jersey. The certified mail receipt was returned signed by respondent, indicating delivery on August 24, 2006. The envelope sent by regular mail was not returned. Respondent did not file an answer to the complaint.

On September 21, 2006, the DEC sent a second letter by certified and regular mail, advising respondent that, unless she filed an answer, the allegations of the complaint would be

deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on her failure to answer the complaint. The certified mail receipt was returned signed by respondent, indicating delivery on September 23, 2006. The regular mail envelope was not returned. As of the date of the certification of the record, respondent had not filed an answer.

In December 2003, Rose Kottakis retained respondent to represent her in a lawsuit to be filed in Special Civil Part in Morris County. Kottakis paid respondent a \$2,000 retainer.

During the summer of 2004, respondent misrepresented to Kottakis that she had filed the lawsuit. Kottakis contacted the court at the end of the summer and learned that the lawsuit had not been filed. In October 2004, respondent again misrepresented to Kottakis that she had filed the lawsuit. In January 2005, Kottakis once again learned from the court that the lawsuit had not been filed. Respondent finally filed the lawsuit in February 2005.

Shortly thereafter, respondent told Kottakis that the defendant had made a settlement offer. From that point, Kottakis had no further contact with respondent, who failed to return her telephone calls. Throughout the representation, respondent had failed to reply to Kottakis's inquiries about the status of her case.

In September 2005, Kottakis left a message on respondent's answering machine discharging her from the representation and asking her to send a copy of her file to Kottakis' new attorney.

In October 2005, Kottakis learned that the lawsuit had been dismissed with prejudice for failure to prosecute. Respondent had not informed Kottakis of the dismissal. Respondent failed to provide copies of the file to Kottakis or her new attorney.

Following a review of the record, we find that the facts recited in the complaint support most of 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).

Respondent accepted a \$2,000 fee from Kottakis to represent her in a litigation matter. Although respondent filed a complaint, she failed to prosecute the matter, causing it to be dismissed with prejudice, violations of RPC 1.1(a) and RPC 1.3.

Moreover, she failed to keep her client informed about the status of the matter and to comply with her reasonable requests for information, a violation of RPC 1.4(b). Also, by failing to inform Kottakis that the complaint was dismissed, respondent violated RPC 8.4(c). "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

Although the complaint alleged a violation of RPC 1.4(a), that rule requires an attorney to inform a prospective client of how, when, and where the client may communicate with the attorney. Because that subsection does not apply to the facts in this case, we dismiss that charge. We also dismiss the charged violation of RPC 1.4(c) because the complaint does not allege facts to support the allegation that respondent failed to explain the matter to the extent necessary to permit Kottakis to make informed decisions about the representation.

Respondent twice misrepresented to her client that she had filed the lawsuit, a further violation of RPC 8.4(c). Although the complaint also alleged a violation of RPC 8.4(a), we determine that RPC 8.4(c) is the more appropriate rule and, thus, dismiss the RPC 8.4(a) charge.

Respondent's failure to provide a copy of the file to Kottakis or to her new attorney constituted a violation of RPC 1.16(d). Although the complaint charged that the failure to turn over the file also violated RPC 1.15(b), we determine that RPC 1.16(d) is the more specific rule. We, therefore, dismiss the RPC 1.15(b) charge.

Finally, by failing to reply to the grievance or to file an answer to the formal ethics complaint, respondent violated RPC 8.1(b).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), RPC 8.1(b), and RPC 8.4(c).

Ordinarily, the level of discipline for the combination of violations present in this case is a reprimand. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in one client matter; the attorney was hired to investigate a personal injury claim for the purpose of a possible lawsuit but failed to return the client's telephone calls and told the client that he had filed suit when he had not; also, the attorney allowed the statute of limitations to expire); In re Tunney, 176 N.J. 272 (2003)

(reprimand where, in three matters involving the same client, the attorney allowed his client's complaint to be dismissed in two of the matters, failed to file a complaint in the third matter, failed to reply to the client's repeated requests for information about the cases, misrepresented the status of all three cases to the client, failed to turn over the files to the client, and failed to cooperate with disciplinary authorities, all in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.16(d), RPC 8.1(b), and RPC 8.4(c); in another matter, the attorney failed to promptly deliver a file to a client and failed to cooperate with disciplinary authorities); In re Taylor, 176 N.J. 123 (2003) (reprimand for misconduct in four matters, including gross neglect, lack of diligence, failure to communicate with clients, and failure to notify clients of termination of representation; the attorney suffered from severe emotional problems and had made some effort to close her practice; in one matter, the attorney failed to reply to her client's attempts to contact her and failed to notify the client that she had terminated the representation; in a second matter, the attorney failed to pay a medical lien timely; in a third matter, the attorney failed to oppose a motion to dismiss a complaint and failed to protect her

client's interests upon termination of the representation; and in a fourth matter, the attorney agreed to represent a client in a personal injury matter, and then took no action on his behalf); In re Porwich, 159 N.J. 511 (1999) (reprimand imposed on an attorney who, in one matter, failed to file a complaint, failed to reply to the client's request for information, misrepresented to the client the status of the case, and failed to cooperate with disciplinary authorities; in a second matter, the attorney failed to file a brief, resulting in the dismissal of an appeal, failed to communicate with the client, and failed to cooperate with disciplinary authorities; in the final matter, Porwich failed to file a personal injury complaint, failed to reply to his client's requests for information, and failed to cooperate with disciplinary authorities; the attorney was found guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to cooperate with ethics authorities, and misrepresentation.

Here, had respondent not defaulted, a reprimand would have been the appropriate discipline for her misdeeds. In a default matter, however, the discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities as

an aggravating factor. In re Nemshick, 180 N.J. 304 (2004). Attorneys who defaulted and were found guilty of misconduct similar to that of respondent have received censures. See, e.g., In re Aratow, 185 N.J. 319 (2005) (censure imposed in a default matter on an attorney who was guilty of gross neglect, lack of diligence, failure to communicate with a client, and misrepresentation; the attorney filed a dental malpractice complaint, failed to serve the defendant, permitted the complaint to be dismissed for lack of prosecution, and obtained an order reinstating the case, only to allow it to be dismissed a second time; he also failed to reply to his client's inquiries about the status of the case, led her to believe that he had served the defendant, and failed to inform her about the dismissal); In re Gottesman, 185 N.J. 318 (2005) (censure imposed in a default matter on an attorney who was guilty of a lack of diligence, failure to communicate with a client, and misrepresentation; the attorney permitted a complaint to be dismissed for failure to file answer to interrogatories, failed to inform his client about the dismissal, and misrepresented to the client that the matter had been adjourned). Neither Aratow nor Gottesman had disciplinary histories.

Because respondent's misconduct most closely resembles that of the attorneys in Aratow and Gottesman, we determine that a censure is the appropriate level of discipline. Members Lolla and Baugh did not participate. Member Frost recused herself.

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
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 Kathleen D. Wargo
Docket No. DRB 06-316

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Disposition: Censure

Members	Suspension	Censure	Admonition	Disqualified	Did not participate
O' Shaughnessy		X			
Pashman		X			
Baugh					X
Boylan		X			
Frost				X	
Lolla		X			X
Neuwirth		X			
Stanton		X			
Wissinger		X			
Total:		6		1	2


Julianne K. DeCore
Chief Counsel