

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-160  
District Docket No. XIV-2014-0247E

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IN THE MATTER OF  
ANNE P. CATALINE  
AN ATTORNEY AT LAW

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Decision

Decided: November 23, 2015

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent, in a single client matter, with knowing misappropriation of client funds, a violation of RPC 1.15(a) (failure to safeguard funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and the principles set forth in In re Wilson, 81 N.J. 451 (1979). The complaint also charged

respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to communicate with the client), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons stated below, we find that respondent committed all of the charged violations and recommend her disbarment for the knowing misappropriation of client funds.

Respondent was admitted to the New Jersey bar in 1994. At the relevant times, she maintained an office for the practice of law in Marlton.

On October 2, 2014, respondent received a reprimand, in a default matter, for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. In re Cataline, 219 N.J. 429 (2014). In that case, after respondent was retained to file a personal injury suit, she took no action in the case for the next five years, failed to keep her client informed about the status of the action, failed to reply to his telephone calls and letters, failed to reply to letters from subsequent counsel, and failed to comply with the ethics investigator's requests for information about the grievance.

On October 8, 2014, respondent was temporarily suspended from the practice of law for failure to obey the Court's

September 4, 2014 order requiring her to "comply with all outstanding requests from the Office of Attorney Ethics within thirty days."<sup>1</sup> In re Cataline, 219 N.J. 618 (2014). Respondent's failure to cooperate with the OAE was in connection with the matter now before us. She remains suspended.

Finally, on September 28, 2015, respondent was suspended for two years in a default involving four client matters, based on her multiple violations of RPC 1.1(a) (gross neglect), RPC 1.4(b) (failure to communicate with the client), RPC 1.15(a) (failure to safeguard property), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). In re Cataline, 223 N.J. 429 (2015). We determined that a two-year suspension was warranted because, in addition to the default nature of the matter and the prior reprimand, respondent had abandoned her clients. In the Matter of Anne P. Cataline, DRB 15-011 (July 28, 2015) (slip op. at 11-13).

Service of process was proper in this matter. On February 27, 2015, the OAE sent a copy of the formal ethics complaint to respondent's home address, by regular and certified mail, return

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<sup>1</sup> Prior to the October 2014 temporary suspension, respondent had been ineligible to practice law, since September 30, 2013, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

receipt requested. Although the certified letter was delivered, the return receipt does not identify the delivery date, and the signature of the person who accepted delivery is illegible. The letter sent by regular mail was not returned.

On March 18, 2015, the OAE sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed her to file an answer within five days and informed her that, if she failed to do so, the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b), and the record would be certified directly to us for the imposition of a sanction.

The certified letter was returned to the OAE with the notations "return to sender," "unclaimed," and "unable to forward." The letter sent by regular mail was not returned.

As of May 6, 2015, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

On November 25, 2010, Jerry and Patricia Saucedo were involved in an automobile accident. All ethics charges stem from respondent's representation of the Saucedos in connection with the personal injuries they sustained in the accident and her subsequent failure to cooperate with the OAE.

The first count of the complaint alleged that, on April 17, 2014, Patricia Saucedo filed a grievance with the OAE, alleging that respondent had failed to communicate with her and her husband, Jerry Saucedo, about Jerry's insurance claim, arising out of the November 2010 car accident. Patricia's claim settled for \$100,000. According to Patricia's grievance, however, respondent had failed to account for \$16,000 of that settlement, which respondent had maintained in escrow for the payment of Patricia's outstanding medical bills.

On May 29, 2014, OAE Deputy Ethics Counsel Maureen Bauman sent the grievance to respondent and directed her to submit a written reply no later than June 13, 2014. Respondent failed to comply with the request.

On July 1, 2014, Bauman wrote to respondent and directed her to appear at the OAE on July 14, 2014, with documents regarding the Saucedo matter. Respondent failed to appear, as required. When OAE Disciplinary Auditor Tiffany Childs called respondent's business telephone number, on that same date, she received a message that the number was not in service.

As previously noted, respondent's failure to cooperate with the OAE resulted in her temporary suspension on October 8, 2014.

Based on the above facts, the complaint charged respondent with having failed to cooperate with the OAE's investigation, a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

On an unidentified date in December 2010, the Saucedos retained respondent to file a claim with Allstate, the insurer of Jude Brown, the driver of the other vehicle involved in the accident. The Saucedos signed a single fee agreement that included both Patricia's and Jerry's matters. Respondent did not give them a copy of the executed fee agreement.

The matter ultimately was settled and, on October 19, 2012, Patricia and respondent went to PNC Bank, where they both endorsed the \$100,000 settlement check payable to respondent's law office and Patricia. On that same date, respondent deposited the check into her attorney trust account.

The OAE subpoenaed from PNC Bank respondent's trust and business account statements for the period September 1, 2012 to July 2014. The statements reflected that, on October 23, 2012, respondent issued a \$33,000 trust account check to herself in payment of her attorney fee in Patricia's matter. On that same date, the funds were deposited into her attorney business account.

On November 2, 2012, respondent issued a \$50,000 trust account check to Patricia. Respondent did not provide Patricia

with a sheet detailing the disbursements from the \$100,000 settlement proceeds. Instead, respondent gave Patricia a handwritten receipt, reflecting the \$50,000 disbursement to Patricia and the withholding of \$16,000.00, in escrow, for the satisfaction of "a possible medical lien through BCBS of Texas." The receipt also stated that, after the payment of all outstanding medical bills, the balance would be forwarded to Patricia.

Patricia's medical insurance carrier, Blue Cross Blue Shield of Texas, eventually paid all of her outstanding medical bills. Respondent paid nothing. Thus, according to the complaint, "[u]nless there was a health care lien through ERISA," respondent should have disbursed the \$16,000 to Patricia.

According to the PNC bank statements, on September 29, 2012, respondent's trust account balance was only \$303.72. It remained at that balance until October 19, 2012, when the \$100,000 settlement check was deposited, increasing it to \$100,303.72. When respondent disbursed her \$33,000 fee, the trust account balance was reduced to \$67,303.72. After she disbursed \$50,000 to Patricia, on November 2, 2012, the balance was \$17,303.72, of which \$17,000 belonged to the client. According to the complaint, of this amount, \$16,000 was for

medical expenses, leaving \$1,000 for Patricia's benefit, and the \$303.72.

After the October 19, 2012 deposit of the \$100,000 check into respondent's trust account, no additional deposits were made through February 7, 2013. On November 15, 2012, the bank charged the trust account with a \$19.99 check printing fee. Between January 3, 2013 and February 7, 2013, respondent made six trust account disbursements totaling \$15,818. Five of them were to herself and all of them were identified and described as having related to the Ronald and Lisa Perry matter. Thus, Patricia's settlement proceeds were used to fund the \$15,818 in disbursements in the Perry matter.

As of January 1, 2013, the balance in respondent's business account was \$402.72. As of February 2, 2013, which was after all disbursements had been made in the Perry matter, the trust account balance was \$1,465.73.

On February 8, 2013, respondent deposited the Perrys' \$85,000 settlement check into her trust account, which raised the balance to \$86,465.73. Thereafter, between February 12 and March 29, 2013, respondent issued nine trust account checks, totaling \$62,548.39. One of those checks, in the amount of \$23,333.33, was payable to the Perrys and represented payment of a portion of their settlement proceeds. A \$2,500 trust account



check was issued to Amanda Perry, without a description of its purpose.

The remaining seven trust account checks, totaling \$36,715.06, were issued to respondent and included three checks, totaling \$2,710.70, in the "Jord Aytch" matter; a \$333.33 attorney fee in the Michelle Funk matter; a \$23,333 attorney fee in an unidentified matter; and two checks totaling \$10,338.03 under the descriptions of "Watzon" and "Cavanaugh DDC" (C2119). Respondent did not deposit funds for Aytch's and Funk's matters into her trust account prior to issuing the disbursements in those cases. Thus, she invaded the Perrys' funds when the above checks were issued and negotiated.<sup>2</sup>

As of March 29, 2013, after all of the above checks had been negotiated, the trust account balance was \$23,917.34. Meanwhile, on March 1, 2013, respondent's business account was overdrawn by \$1,061.04.

On October 1, 2013, the trust account balance was \$42,594.48. During that month, respondent made three disbursements, totaling \$25,282, reducing the balance to

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<sup>2</sup> The complaint did not charge respondent with knowing misappropriation of the Perrys' funds.

\$17,312.48. Throughout October 2013, respondent should have been safeguarding at least \$16,000 for Patricia.

On October 2, 2013, respondent's business account balance was -\$305.65. The next day, she deposited into her business account a \$1,600 trust account check, which contained the notation "Saucedo-Med," of which \$200 in cash was returned to her. The business account balance increased to \$1,095.35. According to the complaint, however, these funds were not used to satisfy a portion of Patricia's medical lien, as respondent had noted on the handwritten receipt that she had given to Patricia, because the client's medical health insurance carrier had paid the bills. Further, respondent never subsequently informed Patricia of any "Saucedo-Med" disbursement, which had not been identified on the handwritten receipt she had issued to Patricia on November 2, 2012.

On November 4, 2013, respondent issued a \$1,312.48 trust account check to herself, bearing the notation "N. Miller Meds Pip." This disbursement reduced the trust account balance to an even \$16,000, where it remained until at least June 30, 2014. We note that these funds were not Patricia's, as \$15,818 of her monies already had been dissipated in early 2013.

The complaint alleged that Patricia did not consent to or know about respondent's use of the balance of her \$16,000 in

settlement proceeds, which, as of February 24, 2015, she still had not received from respondent. Thus, "[w]ithout authority to do so, respondent knowingly and intentionally used for her own purpose the balance of Patricia's settlement proceeds that she was required to safeguard."

We note that the Client Protection Fund paid \$16,000 to Patricia on April 22, 2015. It has not recovered the funds from respondent.

Based on the above facts, the complaint alleged that respondent knowingly misappropriated Patricia's funds, contrary to RPC 1.15(a) and RPC 8.4(c), thus requiring her disbarment under In re Wilson, supra, 81 N.J. 451.

The third and final count of the formal ethics complaint alleged that, on November 20, 2012, respondent filed a lawsuit, on the Saucedos' behalf, against Jude Brown, in the Superior Court of New Jersey, Law Division, Camden County, seeking damages for the injuries that they had sustained in the November 25, 2010 accident. On April 5, 2013, the court issued a notice that, on June 4, 2013, the complaint would be dismissed, without prejudice, for lack of prosecution, unless the action required under R. 1:13 were taken.

On May 31, 2013, respondent filed a motion, on Jerry Saucedo's behalf, seeking an order permitting substituted

service on Brown via his insurance carrier, Allstate. On June 21, 2013, the court granted the motion. Yet, respondent did not serve Allstate with the complaint. On October 25, 2013, the court dismissed Jerry's case for lack of prosecution.

Based on the above facts, the complaint charged respondent with gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3).

Jerry Saucedo did not know that respondent had failed to prosecute his case and that it had been dismissed. On October 4, 2013, Allstate claims representative Kim Granat copied Jerry on a letter that she had written to respondent, in which she stated that she had called respondent's office numerous times and left messages with her receptionist to discuss Jerry's claim. In the letter, Granat requested that respondent contact her to discuss Jerry Saucedo's claim.

On October 16, 2013, Patricia Saucedo spoke to Granat, who told Patricia that she had called respondent nineteen times and had received no response. On that same day, Patricia texted respondent and asked her to contact Granat. In a reply text, respondent indicated that she would.

Thereafter, Patricia made numerous attempts to determine from respondent the status of Jerry's case and the balance of her settlement proceeds, but respondent's office telephone

numbers were disconnected. Respondent did not reply to Patricia's text messages seeking the same information.

Based on the above facts, the formal ethics complaint charged respondent with failure to communicate with the clients, a violation of RPC 1.4(b).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent ignored all attempts on the part of the OAE to investigate this matter. She never filed a written reply to the grievance and she failed to appear at the OAE, despite having been summoned there. By this conduct, respondent violated RPC 8.1(b), which prohibits an attorney, in connection with a disciplinary matter, from knowingly failing to respond to a lawful demand for information from a disciplinary authority.

Respondent exhibited gross neglect and a lack of diligence when, after having procured court approval to serve Allstate on Brown's behalf, she failed to do so, resulting in the dismissal of Jerry's complaint. She also violated RPC 1.4(b), which requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable

requests for information," when she failed to tell Jerry that his lawsuit had been dismissed and ignored Patricia's attempts to ascertain the status of Jerry's case and the balance of her settlement proceeds.

Finally, respondent knowingly misappropriated Patricia's \$16,000, which was to be held in escrow for the payment of medical bills with the balance to be returned to her. As the complaint alleged, respondent did not pay a single medical bill with any portion of the \$16,000. Instead, Patricia's health insurer paid all medical bills.

Rather than return the \$16,000 to Patricia, respondent proceeded to use the monies, without Patricia's knowledge or permission. As of November 2, 2012, respondent's trust account balance was \$17,303.72. Of that amount, \$17,000 belonged to Patricia. Another deposit was not made until February 8, 2013. Yet, between November 15, 2012 and February 7, 2013, \$15,837.99 was disbursed from the trust account in the Perry matter. According to the complaint, respondent had no authority to disburse Patricia's monies for her own purpose, which she did, knowingly and intentionally.

In In re Wilson, supra, 81 N.J. at 455 n.1, the Court described knowing misappropriation as "any unauthorized use by the lawyer of clients' funds entrusted to him, including not

only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." Six years later, the Court elaborated:

The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is "almost invariable," id. at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client. . . .

[In re Noonan, 102 N.J. 157, 159-60 (1986).]

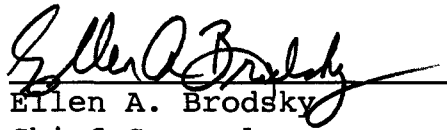
Thus, it is clear that the allegations of the complaint clearly and convincingly support a finding that respondent knowingly misappropriated at least \$15,534.27 in Patricia's monies.

We, therefore, recommend respondent's disbarment for the knowing misappropriation of client funds. Wilson, supra, 81 N.J. 451. In light of this recommendation, there is no need to consider the appropriate measure of discipline for respondent's remaining ethics infractions.

Member Clark 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  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Anne P. Cataline  
Docket No. DRB 15-160


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Decided: November 23, 2015

Disposition: Disbar

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark						X
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	7					1

  
Ellen A. Brodsky  
Chief Counsel