

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-158  
District Docket Nos. XII-2014-  
0011E; XII-2014-0013E; XII-2014-  
0034E; XII-2014-0033E; and XII-  
2014-0043E

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IN THE MATTER OF  
KSENIA V. PROSKURCHENKO  
AN ATTORNEY AT LAW

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Decision

Decided: December 21, 2015

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

These five matters, which are the subject of three formal  
ethics complaints, were before us on certifications of default,  
filed by the District XII Ethics Committee (DEC), pursuant to R.  
1:20-4(f). They have been consolidated for the purpose of  
imposing a single form of discipline.

In all five matters, the formal ethics complaints charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities). In addition, in the individual matters, she was charged with the following violations, in various combinations: RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), and RPC 1.16(d) (upon termination of representation, failure to surrender papers and property to which the client is entitled and failure to refund any advance payment of fee that has not been earned or incurred). For the reasons set forth below, we find that respondent violated all but one of the charged RPCs and impose a six-month suspension for those infractions.

Respondent was admitted to the New Jersey bar in 2008. At the relevant times, she maintained an office for the practice of law in Elizabeth. Respondent has been administratively ineligible to practice since August 2014.

On October 14, 2015, respondent received a censure for her violations of RPC 1.3, RPC 1.4(b), and RPC 1.16(d) in two client matters, plus additional violations of RPC 1.1(a) and RPC 8.1(b) in one of the matters. In re Proskurchenko, 223 N.J. 267 (2015).

Service of process was proper. On October 20, 2014, the DEC sent a copy of the formal ethics complaint, issued in the matter docketed as XII-2014-0033E (Henninger), to respondent's home address, by regular and certified mail, return receipt requested. Both letters were returned to the DEC. The letter sent by regular mail was marked "return to sender - attempted - not known - unable to forward." The letter sent by certified mail was marked "not deliverable as addressed."

On December 19, 2014, the DEC sent a copy of the formal ethics complaints, in the other four matters,<sup>1</sup> to respondent's home address, by regular and certified mail, return receipt requested. Neither the letters nor the return receipt cards for the certified mail were returned to the DEC.

On February 4, 2015, the DEC served respondent by publication in the Star Ledger newspaper. Five days later, she was served by publication in the New Jersey Law Journal. The notices state only that "a Formal Complaint" had been filed against respondent. They do not identify the disciplinary matter(s) at issue.

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<sup>1</sup> The matters are XII-2014-0011E (Saffold), XII-2014-0013E (Franchetti), XII-2014-0034E (Torsiello), and XII-2014-0043E (Balunis).

As of April 29, 2015, respondent had not filed an answer to any of the complaints. Accordingly, on that date, the DEC certified the record in each matter to us as a default.

**THE SAFFOLD MATTER (XII-2014-0011E)**

In March 2011, Ruth Saffold retained respondent to represent her in the defense of a case involving the Division of Child Protection and Permanency, formerly the Division of Youth and Family Services (DYFS). Between March and June 2011, Saffold provided respondent with "evidence and information" in support of her defense. Respondent did not offer the "documents and information" into evidence and failed to inform Saffold of her inaction. Thus, the complaint charged, respondent violated RPC 1.4(b).

On numerous occasions, between March and July 2011, respondent failed to reply to Saffold's e-mails and answer or return her telephone calls within a reasonable time. According to the complaint, she violated RPC 1.3.

The complaint further alleged that, after accepting a retainer from Saffold, respondent failed to return the client's telephone calls and to reply to her client's requests for information. Respondent also failed to discuss the case,

including evidence and possible witnesses and their testimony, with Saffold, in preparation for the hearing, after having represented to Saffold that she possessed great experience in defending DYFS cases. The complaint alleged that respondent exhibited gross neglect, a violation of RPC 1.1(a).

The complaint recounted the DEC investigator's numerous attempts to procure respondent's written reply to the grievance, all to no avail. The investigator mailed the grievance to respondent on April 9, 2014. Having received no reply from respondent, the investigator left a voicemail message for respondent, on May 1, 2014, and sent her an e-mail on May 5 and 6, 2014.

On May 6, 2014, at respondent's request, the investigator faxed a copy of the grievance to her. Still, she did not reply. On May 15, 2014, the investigator wrote to respondent and informed her that her failure to reply to the grievance constituted a failure to cooperate with the investigation and could result in the filing of a failure-to-cooperate charge. On June 20, 2014, the investigator informed respondent that her failure to reply to the grievance would result in the filing of that charge.

Respondent never filed a written reply to the grievance. Accordingly, the complaint charged her with having violated RPC 8.1(b).

**THE FRANCHETTI MATTER (XII-2014-0013E)**

In March 2013, Alanna Franchetti paid a \$1,375 retainer after hiring respondent to file a divorce complaint on her behalf. On numerous occasions between March 2013 and March 2014, Franchetti telephoned and wrote to respondent about the matter, but received no response, a violation of RPC 1.3.

By November 21, 2013, respondent had not filed a complaint but told Franchetti that she would be doing so shortly. Yet, a year later, respondent still had not filed a complaint. According to the ethics complaint, respondent's conduct violated RPC 1.4(b).

By March 2014, respondent still had not filed the divorce complaint. Thus, Franchetti terminated her services and requested a refund of the retainer. As of December 12, 2014, respondent had not refunded the retainer, a violation of RPC 1.16(d).

Finally, the complaint alleged, respondent exhibited a pattern of negligence in handling Franchetti's case, by failing

to keep Franchetti informed, failing to file the divorce complaint, and failing to return the retainer, a violation of RPC 1.1(b).

As recited and detailed above in the Saffold matter, the investigator made numerous attempts to procure respondent's written reply to Franchetti's grievance, to no avail. Accordingly, the complaint charged her with having violated RPC 8.1(b).

**THE TORSIELLO MATTER (XII-2014-0034E)**

In November 2013, Geri Torsiello retained respondent to represent her and her husband in a bankruptcy matter. Prior to filing for bankruptcy, Torsiello's husband had received a \$5,000 settlement from his employer, which was being held in the trust account of his attorney in that matter. On numerous occasions, Torsiello asked respondent whether the check was required to be turned over to the trustee in bankruptcy, but respondent failed to answer her. In addition, respondent permitted the bankruptcy case to be dismissed twice for failure to comply with certain deadlines not specified in the complaint. The complaint alleged that, by this conduct, respondent violated RPC 1.4(b).

On numerous occasions, between November 2013 and April 2014, respondent failed to reply to Torsiello's telephone calls and emails. Based on this conduct, the complaint charged respondent with a violation of RPC 1.3. At some unidentified time, Torsiello hired another attorney, who, as of the filing of the ethics complaint, had not been able to obtain the file from respondent. Because Torsiello hired new counsel, she incurred additional attorney fees and costs, as the new attorney has had to file motions to become substitute counsel in order to assist Torsiello with the bankruptcy case.

Finally, the complaint charged respondent with having violated RPC 1.1(b) by failing to communicate with Torsiello; failing to keep her informed of the status of her case; failing to comply with deadlines, thus causing the bankruptcy matter to be dismissed on at least two occasions; and failing to inform the attorney holding Mr. Torsiello's \$5,000 settlement proceeds whether or not the funds should be turned over to the bankruptcy trustee.

The complaint recounted numerous attempts on the part of the DEC investigator to procure respondent's written reply to the grievance, all to no avail. The investigator mailed the grievance to respondent on April 11, 2014. Having received no



reply from respondent, the investigator followed up by sending an e-mail to respondent on May 5 and 6, 2014 and by leaving a voicemail message for her on June 12, 2014.

On June 20, 2014, the investigator wrote to respondent and informed her that her failure to reply to the grievance was a failure to cooperate with the investigation and could result in the filing of a failure-to-cooperate charge. Still, respondent never filed a written reply to the grievance. Accordingly, the complaint charged her with having violated RPC 8.1(b).

**THE HENNINGER MATTER (XII-2014-0033E)**

On March 27, 2014, John Miller, who had been represented by respondent in a family law matter, retained grievant Jeff Henninger to take over the case. The next day, Henninger sent a letter to respondent, informing her that Miller had retained him and requesting that she sign and return an enclosed substitution of attorney and forward Miller's file at her earliest convenience.

Having received nothing from respondent, and after several unsuccessful attempts to telephone her, on April 2, 2014, Henninger filed an order to show cause to obtain Miller's file from respondent. In addition, on that same date, and on seven

separate dates thereafter, in April 2014, he "reached out" to respondent seeking the executed substitution of attorney. Henninger received Miller's file from respondent on April 23 or 24, 2014.

The complaint charged that respondent did not turn over Miller's file to Henninger within a reasonable amount of time, a violation of RPC 1.16(d).

On May 29, 2014, the DEC investigator mailed a copy of the grievance to respondent and requested a written reply within ten days. On June 26, 2014, a follow-up letter was sent to respondent. Because she never replied to the grievance, the complaint alleges that she violated RPC 8.1(b).

**THE BALUNIS MATTER (XII-2014-0043E)**

Respondent represented grievant Michael Balunis in a divorce action, which culminated in a December 13, 2013 judgment of divorce, incorporating the parties' settlement agreement. Despite Balunis' requests, respondent never provided him with a copy of the divorce judgment. In addition, she failed to reply to his inquiries about alleged child support arrears, which caused his application for a passport to be denied. Thus, respondent was charged with having violated RPC 1.4(b).

On June 26, 2014, the DEC investigator mailed a copy of the grievance to respondent and requested a written reply within ten days. On July 16 and October 24, 2014, follow-up letters were sent to respondent. She did not reply to the grievance and, therefore, the complaint alleged, she violated RPC 8.1(b).

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The facts recited in the complaints support most of the charges of unethical conduct. Respondent's failure to file answers to the complaints 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).

In the Saffold matter, respondent exhibited gross neglect and a lack of diligence, failed to communicate with the client, and failed to cooperate with disciplinary authorities. Although the alleged facts were not accurately aligned with the RPCs charged, we nevertheless find that the allegations clearly established violations of all four RPCs.

First, although the complaint charged respondent with having violated RPC 1.4(b), as the result of her failure to offer certain "documents and information" into evidence at the DYFS proceeding and to inform Scaffold of her inaction, these

facts clearly support a finding of gross neglect and lack of diligence.

Further, although the complaint alleged that respondent's failure to reply to Saffold's emails and to answer or return her telephone calls within a reasonable time constituted a lack of diligence, these failures clearly support a finding of a failure to communicate with the client, a violation of RPC 1.4(b). Similarly, the allegations that respondent failed to return the client's telephone calls, failed to reply to her client's requests for information, and failed to discuss the case with her support a finding of RPC 1.4(b), notwithstanding that the complaint charged her with gross neglect.

Finally, respondent violated RPC 8.1(b) when she failed to submit a written reply to the grievance.

In the Franchetti matter, although the complaint alleged that respondent's failure to reply to the client's telephone calls and letters was a violation of RPC 1.3, in fact, it was a violation of RPC 1.4(b), with which she also was charged. Further, although the complaint alleged that respondent violated RPC 1.4(b), by failing to file a complaint on the client's behalf during the one-year period following her retention,

despite her promise that she would do so "shortly," those facts support a finding that respondent violated RPC 1.3.

Respondent's act of gross neglect in the Saffold matter and her simple neglect in the Franchetti matter do not meet the pattern requirement for RPC 1.1(b). As shown below, however, respondent's additional neglect in the Torsiello matter is sufficient to establish a violation of the rule.

In addition, respondent's failure to refund Franchetti's retainer, following the termination of her services, violated RPC 1.16(d). Finally, respondent violated RPC 8.1(b) when she failed to submit a written reply to the grievance.

In the Torsiello matter, although the complaint charged respondent with failure to communicate with the client based on her inaction, which caused the bankruptcy case to be dismissed twice for failure to comply with certain deadlines, in fact, that inaction was a violation of RPC 1.3. Further, as the complaint alleged, respondent's failure to answer Torsiello's inquiries as to whether her husband was required to turn over \$5,000 to the trustee in bankruptcy was a violation of RPC 1.4(b), as was her failure to return Torsiello's numerous telephone calls and e-mails, between November 2013 and April 2014. In addition, the gross neglect in the Saffold matter and

the simple neglect in the Franchetti and Torsiello matters establish a pattern of neglect, a violation of RPC 1.1(b).

Finally, respondent violated RPC 8.1(b) when she failed to submit a written reply to the grievance.

In the Henninger matter, respondent was charged with having violated RPC 1.16(d), based on her failure to turn over her client's file to Henninger, Miller's subsequent counsel. According to the complaint, Henninger first requested Miller's file from respondent on March 28, 2014. He did not receive it until nearly a month later, after he had filed an order to show cause. Among other things, RPC 1.16(d) requires an attorney, upon termination of a representation, to surrender papers and property to which the client is entitled. Respondent did turn over Miller's file to Henninger within a month. We do not agree that a one-month delay in the surrender of the file was, on its face, unreasonable, as charged in the complaint. Thus, we determined to dismiss that charge.

Respondent violated RPC 8.1(b), however, by failing to submit a written reply to the Miller grievance.

In the final matter, Balunis, respondent violated RPC 1.4(b) by failing to provide the client with a copy of the divorce judgment and failing to reply to his inquiries about

alleged child support arrears. She also violated RPC 8.1(b) by failing to submit a written reply to the grievance.

To conclude, respondent violated RPC 8.1(b) in all five client matters. She violated RPC 1.1(a) in one matter (Saffold), RPC 1.3 in three matters (Saffold, Franchetti, Torsiello), RPC 1.4(b) in four matters (Saffold, Franchetti, Torsiello, and Balunis), RPC 1.16(d) in one matter (Franchetti), and finally, by virtue of her gross neglect and/or simple neglect in three matters (Saffold, Franchetti, and Torsiello), RPC 1.1(b).

There remains for determination the appropriate measure of discipline to be imposed for respondent's gross neglect, pattern of neglect, lack of diligence, failure to communicate with her clients, failure to refund an unearned retainer, and failure to cooperate with disciplinary authorities.

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Cataline, 219 N.J. 429 (2014) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee

investigator) and In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance).

Censures are imposed when there are aggravating factors beyond the default itself. See, e.g., In re Rosanelli, 203 N.J. 378 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to cooperate with disciplinary authorities, and failure to return the unearned portion of the fee advanced by the client; the attorney was temporarily suspended after he had failed to comply with a fee arbitration award in favor of the client and remained suspended at the time of the decision); In re Romaniello, 216 N.J. 248 (2007) (censure for attorney who grossly neglected and lacked diligence in his handling of a disability claim, failed to communicate with the client, failed to promptly disburse property belonging to a third party, failed to maintain a bona fide office, and failed to cooperate with disciplinary authorities; aggravating factors were the attorney's abandonment of his client after he had been designated the client's representative, his inability to account for a disability payment into his business account, and the administrative



revocation of his law license for nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection for seven years).

Respondent has defaulted in this case, and she has an ethics history – a censure imposed after she had defaulted in two matters. Although the cases cited would support a censure where the case involves one client matter and a single default, this case does not involve one – or even two – client matters. Rather, it involves five client matters and three defaults. What emerges from these facts and respondent's prior discipline is not just a troubling pattern of neglect, but an egregious pattern of non-cooperation with disciplinary authorities.

Suspensions imposed on attorneys in default matters involving multiple violations have ranged from three months to three years. See, e.g., In re Manzi, 208 N.J. 342 (2011) (three-month suspension imposed on attorney who was guilty of gross neglect and dishonesty in one of two client matters, plus lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities in both matters; attorney was censured in 2010 for similar misconduct in another default); In re Avery, 194 N.J. 183 (2008) (three-month suspension in two default matters, where the attorney grossly

neglected four estate matters and was guilty of gross neglect, lack of diligence, failure to produce a court-ordered accounting, failure to communicate with clients, and failure to cooperate with disciplinary authorities; no ethics history); In re Davidson, 204 N.J. 175 (2010) (six-month suspension in one client matter, where the attorney filed a complaint on his client's behalf but failed to prosecute the case; the attorney's infractions included gross neglect, lack of diligence, failure to expedite litigation, failure to communicate with the client, and failure to cooperate with ethics authorities; the attorney's ethics history included a three-month suspension, a reprimand, and a six-month suspension); In re Tunney, 185 N.J. 398 (2006) (six-month suspension for misconduct in three client matters; the violations included gross neglect, lack of diligence, failure to communicate with clients, and failure to withdraw from the representation when the attorney's physical or mental condition materially impaired his ability to represent clients; prior reprimand and six-month suspension); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters, and failed to cooperate with the investigation of the grievances; in one of the matters,

the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a private reprimand in 1992, a reprimand in 1990 for gross neglect in two matters, at which time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee, and another reprimand in 1996 for failure to communicate with a client, failure to supervise office staff, and failure to release a file to a client); In re Brekus, 202 N.J. 333 (2010) (one-year suspension for attorney's misconduct in a client's workers' compensation and personal injury claims; the misconduct included gross neglect, pattern of neglect, lack of diligence, failure to return the client's file, misrepresentation to client, and failure to cooperate with disciplinary authorities; prior admonition, reprimand, censure, and one-year suspension); In re Rosenthal, 208 N.J. 405 (2012) (in seven default matters, one-year suspension imposed on attorney who violated RPC 1.1(a) and RPC 1.1(b) in two matters, RPC 1.3 in four matters, RPC 1.4(b) in seven matters, RPC 1.4(c) in one matter, RPC 1.5(a) in three matters, RPC 1.5(b) in one matter, RPC 3.2 in one matter, RPC 8.1(b) in seven matters, RPC 8.4(c) in two matters, and RPC 8.4(d) in two matters; he also abandoned six of the seven

clients; attorney had unblemished disciplinary history in his more than twenty years at the bar); In re Griffin, 170 N.J. 188 (2001) (on a motion for reciprocal discipline involving seven client matters, one-year suspension imposed on attorney who was guilty of pattern of neglect, failure to communicate with the clients, and failure to cooperate with disciplinary authorities); In re Kanter, 162 N.J. 118 (1999) (attorney displayed gross neglect, a pattern of neglect, lack of diligence, and failure to communicate with clients in five matters; in three of the matters, he failed to prepare retainer agreements and, in one of the matters, failed to expedite litigation; one-year suspension); In re Lawnick, 162 N.J. 113 (1999) (one-year suspension for attorney who agreed to represent clients in six matters and took no action to advance their claims, failed to communicate with clients, and failed to cooperate with disciplinary authorities); In re Herron, 140 N.J. 229 (1995) (one-year suspension; in seven client matters, attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to deliver funds and to surrender papers to a client, failure to cooperate with ethics authorities, and misrepresentation of the status of matters to clients); In re Rosenthal, 118 N.J. 454

(1990) (one-year suspension; attorney exhibited gross neglect, failed to pursue lawful objectives of clients and failed to carry out contracts of employment in three matters, failed to communicate with his clients in two of the matters, failed to refund a retainer in one of the matters, displayed a pattern of neglect, and failed to cooperate with ethics authorities); and In re Main, 208 N.J. 331 (2011) (three-year suspension for gross neglect, lack of diligence, failure to communicate with the client, failure to comply with client's request to turn over his file to new counsel in one client matter, and failure to promptly comply with disciplinary investigator's requests for information about the grievance in one client matter; also, attorney exhibited a pattern of neglect in this and a previous default matter because the conduct at issue occurred around the same time; prior admonition for failure to cooperate and three-month suspension for misconduct in four consolidated default matters).

Although this case is most akin to Manzi, in terms of the default status of both the previous and current matters and the imposition of a censure in the previous matter for similar misconduct, that matter involved only two client matters, whereas this case involves five. Thus, in our view, a three-

month suspension would be insufficient for respondent's misconduct.

Those cases in which six-month suspensions were imposed also are somewhat dissimilar, as they involve either fewer clients or more serious ethics histories or both. Generally, those cases in which a one-year suspension was imposed involved more client matters (Griffin, Herron), more serious ethics histories (Brekus), and an attorney who abandoned his clients (Rosenthal). Two of those cases, however, involved attorneys who exhibited misconduct in five and six matters but had no history of discipline at the time (Kanter and Lawnick).


Certainly, there is no single case that requires the imposition of a particular measure of discipline on respondent for her misconduct in the five client matters and three defaults now before us. In our view, a one-year suspension would be too harsh because respondent's disciplinary history is limited to a censure, albeit in a default. Thus, given the number of matters involved in this case and respondent's egregious failure to cooperate with disciplinary authorities, we determine to impose a six-month suspension. In addition, prior to reinstatement, respondent shall provide to the OAE proof of completion of four

credit hours of continuing legal education courses on the subject of attorney ethics.

Members Gallipoli and Zmirich voted to impose a one-year suspension. 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:   
Eilen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Ksenia V. Proskurchenko  
Docket No. DRB 15-158


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Decided: December 21, 2015

Disposition: Six-month suspension

<i>Members</i>	Disbar	One-year Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark						X
Gallipoli		X				
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich		X				
<b>Total:</b>		2	5			1

  
Ellen A. Brodsky  
Chief Counsel