

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-332

IN THE MATTER OF :
 :
KAREN ANN KUBULAK, :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: August 18, 1998

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

Pursuant to R. 1:20-4(f)(1) the Office of Attorney Ethics ("OAE") certified the record
in this matter directly to the Board for the imposition of discipline following respondent's
failure to file an answer to the formal ethics complaint.

On July 24, 1997 a copy of the complaint was personally served on respondent by an
OAE investigator. Respondent did not file an answer, prompting the certification of the
record to the Board.

Respondent was admitted to the New Jersey bar in 1980. She has no prior history of

discipline.

This matter involves four grievances filed against the respondent; the grievance filed by Ethel J. Kubala was previously before the Board as Docket No. DRB 96-195, a default filed by the District VIII Ethics Committee ("DEC"). That matter was remanded to the OAE by the Board to resolve overreaching and misappropriation issues. Furthermore, the Board simultaneously recommended to the Court that respondent be temporarily suspended. The Court instead directed her to answer the formal complaint within ten days.

Following its investigation, the OAE filed a two-count complaint, charging respondent with violations relating to the *Kubala* matter and three additional matters. Count one of the complaint charged respondent with failure to cooperate with disciplinary authorities in violation of RPC 8.1(b) and conduct prejudicial to the administration of justice in violation of RPC 8.4(d) (*Kubala, Domnaru, Taddio and Cleback*). Count two of the complaint charged respondent with gross neglect (RPC 1.1(a)), failure to abide by client's decisions concerning objectives of representation (RPC 1.2(a)), lack of diligence (RPC 1.3), failure to communicate (RPC 1.4(a)), failure to expedite litigation (RPC 3.2), failure to respond to a lawful demand for information from a disciplinary authority (RPC 8.1(b)), conduct involving dishonesty, fraud, deceit, or misrepresentation (RPC 8.4(c)) and conduct prejudicial to the administration of justice (RPC 8.4(d)) (*Domnaru*).

The Kubala Matter

On June 13, 1995, Kubala filed a grievance with the DEC regarding respondent. The

DEC wrote to respondent on June 28, 1995, July 19, 1995, August 24, 1995 and September 24, 1995 requesting a reply. Respondent failed to reply to these letters. On October 18, 1995 the DEC investigator telephoned respondent about the grievance. Respondent represented that she would submit a written reply, but failed to do so. Thereafter, on January 25, 1996 the DEC served the complaint on respondent. That complaint charged respondent with violations of RPC 8.1(b) (failure to cooperate with the disciplinary authorities), RPC 8.4(a) (engaging in conduct violative of the *Rules of Professional Conduct*) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The DEC notified respondent, by letter dated February 22, 1996, that the obligation to file an answer was mandatory and that the complaint would be amended to charge a "willful" violation of RPC 8.1(b) because of respondent's failure to answer the complaint.

On November 1, 1996, pursuant to the Order of the Supreme Court dated October 21, 1996, respondent filed an answer to the formal complaint. The OAE determined that respondent's answer was not responsive on the issue of respondent's handling of the estate of the grievant's sister. Thus, by letter dated January 2, 1997, the OAE requested a complete response to the complaint by January 13, 1997. Respondent did not reply. On January 14, 1997 the OAE investigator left a telephone message for respondent and also sent her a telefax requesting a reply to the January 2, 1997 letter. Respondent sent a telefax to the OAE on January 16, 1997, indicating that she would reply later that day. Respondent did not reply. On January 21, 1997 the OAE investigator telefaxed a request that respondent reply by 5:00

p.m. on that day. Respondent did not do so.

The Domnaru Matter

Count one of the complaint charged respondent with violations of RPC 8.1(b) and RPC 8.4(d), while count two of the complaint charged respondent with violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(a), RPC 3.2, RPC 8.1(b), RPC 8.4(c) and RPC 8.4(d).

On October 29, 1996, Ioana Domnaru filed a grievance against respondent alleging that she failed to obtain and disburse settlement proceeds of \$71,500. Of that amount, \$70,000 had been deposited with the Superior Court trust fund and the balance of \$1,500 was held by the state of New Jersey. By letter of November 13, 1996, the OAE investigator requested a reply from respondent within ten days. On November 25, 1996 the OAE investigator left a telephone message for respondent and telefaxed a letter requesting confirmation that she would submit a reply to the grievance. In a telephone conversation, respondent's secretary informed the investigator that respondent would mail a response by November 27, 1996. On that date, respondent's secretary told the investigator that a reply had been mailed and another copy would be hand-delivered on December 2, 1996. On December 3, 1996, when the reply was not received as promised, the OAE investigator left a message with respondent's office and also telefaxed a letter to her stating that the OAE would move for her immediate suspension if she did not file a response by 2:00 p.m. on that date. On December 4, 1996 the OAE received respondent's reply, which appeared to have been mailed on November 27, 1996.

At an OAE interview conducted on April 1, 1997, respondent was asked for the name of the two attorneys with whom she had been corresponding to obtain the release and turnover of grievant's settlement proceeds. Respondent gave the OAE one name and promised that she would supply the other name that afternoon upon her return to the office, but failed to do so. On April 3 and April 4, 1997, the OAE investigator left telephone messages with respondent's office. Respondent did not answer these messages. On April 7, 1997, when the investigator finally spoke to respondent, respondent again indicated that she would provide the name of the attorney. The investigator also requested copies of correspondence regarding respondent's attempts to obtain the settlement funds. Respondent did not call back or supply the requested documents.

Count two alleged that Domnaru was experiencing difficulty in obtaining her personal injury settlement. As noted above, Domnaru's settlement proceeds of \$70,000 were deposited with the Superior Court trust fund on August 14, 1996. Before the funds were deposited, Domnaru contacted the assignment judge concerning the need to speed up the preparation of the releases to complete the settlement. As a result, the judge wrote to respondent on July 3, 1996, urging her to expedite the preparation of the necessary releases. On September 3, 1996, the judge again wrote to respondent, urging her to communicate with Ms. Domnaru. When respondent still failed to distribute the settlement funds, Domnaru filed a grievance on October 29, 1996.

At the April 1, 1997 meeting with OAE representatives, respondent represented that

she had taken various steps to obtain Domnaru's funds from the Superior Court trust fund. Later, during a May 19, 1997 meeting with the OAE, respondent produced a December 16, 1996 letter that she had ostensibly written to a deputy attorney general. Respondent represented that the letter was a form of consent order for the release of the funds from the Superior Court Trust Fund. Respondent indicated that copies of the December 16, 1996 letter were sent to Domnaru and the attorney for the defendant and that a consent order was included. Upon the OAE's inquiry, the deputy attorney general, Domnaru and defendant's attorney all individually denied having received the December 16, 1996 letter or the order purportedly enclosed. In addition, at the second OAE meeting, respondent represented that she would immediately seek the release of Domnaru's funds and keep the OAE informed of her progress. As of the filing of the complaint on July 22, 1997, respondent still had not obtained Domnaru's settlement funds.

The Taddio Matter

The first count of the complaint charged respondent with violations of RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

On January 11, 1997 Robert D. Taddio filed a grievance against respondent, alleging gross neglect of a personal injury matter and failure to communicate. Respondent did not reply to the letters sent by the DEC on January 30, 1997, February 20, 1997, March 21, 1997 and April 25, 1997, seeking a reply to the grievance. On May 8, 1997, after the investigation

was transferred to the OAE, the OAE investigator reached respondent by telephone. Respondent indicated that she was with a client. Despite promises to the contrary, she failed to return his call. On May 9, 1997 the investigator mailed and telefaxed a letter to respondent requiring her to appear at the office of the OAE on May 19, 1997. Although the complaint contains no further information about this grievance, it appears from the allegations in the *Domnaru* grievance, that respondent did attend the May 19, 1997 meeting.

The Cleback Matter

On May 19, 1997 George Cleback filed a grievance against respondent alleging gross neglect and failure to communicate in a workers' compensation matter and in a medical malpractice case. On June 9, 1997 the OAE sent the grievance to respondent by certified mail, regular mail and by telefax, requesting a reply within ten days. Respondent failed to reply. Count one of the complaint thus charged respondent with violations of RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct. The record supports a finding of violations of RPC 8.1(b) and RPC 8.4(d)

in the *Kubala*, *Domnaru*, *Taddio* and *Cleback* matters and violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(a), RPC 3.2, RPC 8.1(b), RPC 8.4(c) and RPC 8.4(d) in the second count of the *Domnaru* matter.

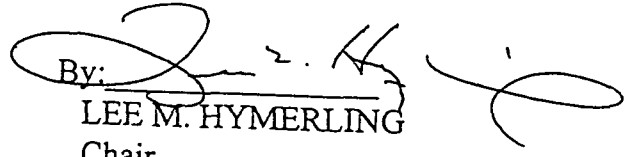
Absent respondent's failure to cooperate with disciplinary authorities, a reprimand would constitute appropriate discipline. See e.g. *In re Gordon*, 139 N.J. 606 (1995) (reprimand for gross neglect and failure to communicate in two matters) and *In re Carmichael*, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate). However, under the circumstances of this case, a short-term suspension is more appropriate, as imposed in *In re Ortopan*, 143 N.J. 586 (three-month suspension for gross neglect, failure to communicate, failure to turn over client files and failure to cooperate with disciplinary authorities) and *In re Kates*, 137 N.J. 102 (1994) (three-month suspension for lack of diligence, failure to communicate and extreme indifference towards the ethics system).

Based on the foregoing, the Board was unanimous in determining to suspend respondent for three months. One member did not participate.

The Board further determined to direct the OAE to conduct a full audit of respondent's attorney accounts. Prior to reinstatement, respondent must provide a certification from the OAE, which confirms that respondent has complied fully with all audit-related demands by the OAE.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 8/18/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Karen A. Kubulak
Docket No. DRB 97-332**

Decided: August 18, 1998

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson							x
Schwartz		x					
Thompson		x					
Total:		8					1

Robyn M. Hill 8/27/98
Robyn M. Hill
Chief Counsel