SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-243
District Docket No. VB-2016-0014E

IN THE MATTER OF

PETER A. COOK

AN ATTORNEY AT LAW

Decision

Argued: November 17, 2016

Decided: March 30, 2017

James H. Forte appeared on behalf of the District VB Ethics Committee.

Gerard E. Hanlon appeared on behalf of respondent.

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

This matter was before us on a recommendation by the District VB Ethics Committee (DEC) for the imposition of dual sanctions on respondent – a reprimand plus an admonition - for four ethics violations. The four-count formal ethics complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about

the status of a matter), RPC 1.15(b) (failure to promptly notify a third party of receipt of funds and failure to promptly disburse funds), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons detailed below, we determine to impose a censure and to require respondent to provide proof of completion of the administration of the Ellison estate within 30 days of the issuance of any Order entered by the Court in this matter.

Respondent was admitted to the New Jersey bar in 1994. He is engaged in the practice of law in Millburn, Essex County, New Jersey. In 2013, respondent received an admonition for lack of diligence and failure to communicate in two client matters. In the Matter of Peter A. Cook, DRB 12-290 and DRB 12-331 (January 25, 2013).

Respondent's law practice focuses primarily on the preparation of wills and trusts and the administration of estates. Respondent prepared a last will and testament, dated February 26, 2009, for his client, Frank E. Ellison (Ellison), of Morris Plains. Ellison did not have children, surviving siblings, or nieces and nephews. His will named as his sole beneficiary Shirley M. Stiltner (Stiltner), the 83-year-old sister of Ellison's deceased wife, and a resident of the State of Washington. Ellison appointed respondent as the executor of

his estate. Respondent had previously acted as the executor of two or three other unrelated clients' estates.

On October 25, 2009, Ellison died. On February 16, 2010, the Morris County Surrogate's Court issued Letters Testamentary certifying the will as genuine, admitting the will to probate, and authorizing respondent, as executor, to administer Ellison's estate. Respondent previously had handled the administration of fifty to fifty-five estates, in varying roles.

Rule 4:80-6 required respondent, within sixty days from the date of the issuance of the Letters Testamentary, February 16, 2010, to mail to Stiltner, as beneficiary, a written notice "that the will has been probated, the place and date of the probate, the name and address of the personal representative and a statement that a copy of the will shall be furnished upon request." Respondent, however, did not provide such written notice to Stiltner until July 29, 2010, more than five months after the will had been probated. He defended his delayed notice, asserting that he had satisfied the Rule via telephone discussions with Stiltner.

Respondent testified that the Ellison estate presented complications, as it comprised "different bank accounts, balances, [and] accrued interest, [and required] searching for assets," and that it took significant time to attempt to carry

out Ellison's wish to donate his body for medical research. Additionally, when it was finally determined that Ellison's cause of death had rendered his body unsuitable for donation, respondent was required to locate a blood relative to authorize the release of Ellison's body from the morgue for cremation. A genealogist had to be retained to assist in this task. Ellison's cremation, thus, was delayed to March 2010, several months after his death.

Thereafter, approximately one month was lost because the Internal Revenue Service refused to issue an Employment Identification Number for the estate, based on a prior incident in which someone had filed a fraudulent tax return using Ellison's social security number. Additionally, while administering the Ellison estate, respondent also was administering six or seven other estates, and had only one employee, paralegal Tom Goldsmith.

Following her receipt of the R. 4:80-6 written notice, Stiltner made multiple attempts to contact respondent by telephone to inquire when the proceeds of the estate would be distributed. Respondent, however, did not return her calls. He admitted that, in 2010, his communication with Stiltner regarding the administration of the estate was "sporadic," but claimed they spoke at some point in the beginning of 2010. He

testified that he "apologized to Ms. Stiltner that I should have gotten more help [sic], I should have been faster doing all of this. I should have communicated it in a better way and more frequently." Respondent admitted that he did not maintain a call log for the Ellison matter. In respondent's prior disciplinary cases, however, it was established that he maintained call logs for his client matters.

In September 2010, Stiltner retained Laurel Tiller (Tiller), an attorney in Washington, to revise her own will. Stiltner informed Tiller that she was the sole beneficiary of Ellison's estate and was having difficulty getting information from respondent. Accordingly, on September 27, 2010, Tiller sent a letter to respondent, requesting specific information regarding the status of the administration of Ellison's estate. About one month later, on October 28, 2010, respondent replied to Tiller's letter, but failed to provide substantive answers to most of his questions. Rather, respondent represented that he anticipated finalizing the estate within thirty to sixty days. He neither did so nor communicated with Tiller again.

In 2011, Stiltner called respondent on fourteen occasions for information on the status of the administration of Ellison's estate. She maintained a call log of her attempts to speak with respondent, all of which were unsuccessful. Respondent's

paralegal, Goldsmith, informed Stiltner, on November 8, 2011, that the estate would be "wrapped up" in approximately one week. Respondent did not, however, finalize the estate within that timeframe. Accordingly, by letter dated January 26, 2012, Stiltner asked respondent for information about the status of the estate, noting that Ellison had died two years prior. In a February 16, 2012 letter, respondent represented to Stiltner that he would finalize the estate in approximately two weeks. Respondent did not do so.

Consequently, in March 2012, after hearing nothing further from respondent, Stiltner filed a grievance against him, alleging lack of diligence and failure to communicate in connection with the Ellison estate. Respondent conceded that he should have kept Stiltner better informed of the status of the estate. Additionally, he testified that he understood why she had filed the grievance and that her concerns were legitimate. On April 4, 2012, respondent sent Stiltner another letter, asserting that he anticipated finalizing the estate within two to three weeks. Once again, respondent did not do so.

Respondent admitted that he never sent Stiltner notices regarding specific funds that were deposited into his attorney trust account for the Ellison estate. He contended that such

notices were not necessary, because he provided an accounting to Stiltner in December 2012.

Respondent further explained that, although he tried to open an estate account, the person serving as branch manager at his Sovereign Bank location constantly changed positions. Respondent admitted that he "should have attended to it," and that the estate funds, instead, remained in his trust account.

On September 26, 2012, after becoming aware of the grievance, respondent sent Stiltner an attorney trust account check for $200,000, "representing the bulk of the Estate checking account balance," and again asserted that he was "in the process of finalizing the estate." On November 13, 2012, he sent Stiltner an attorney trust account check for $41,878.04, representing "proceeds from the MFS Investment account, net of twenty percent (20%) income tax remittance," and again claimed to be bringing the estate to a conclusion.

Respondent testified that, initially, he wanted to disburse the funds of the estate to Stiltner "all in one fell swoop," but eventually concluded, in September 2012 (almost three years after Ellison's death), that the funds had to be disbursed in increments. Respondent acknowledged that he had paid himself both attorneys' fees and executor commissions, totaling almost $50,000, in 2010 and 2011, before making the first disbursement

to Stiltner in 2012. He maintained that all payments to himself were justified under New Jersey law.

Subsequent to the filing of the grievance, respondent sent Stiltner four binders of documents, comprising two to three thousand pages, that he had prepared in connection with a separate Office of Attorney Ethics (OAE) misappropriation investigation into his handling of the Ellison estate. During her testimony, Stiltner confirmed receipt of these documents. Respondent claimed that Stiltner had told him that she regretted having filed the grievance and that she expressed a desire to withdraw it. Therefore, he drafted and sent to Stiltner for her signature a letter reflecting her statements to him. Although Stiltner acknowledged that she had felt sympathy for respondent after she had filed the grievance and finally saw proof that he had been working on the estate, she denied having indicated a desire to withdraw her grievance.

Despite respondent's multiple representations and promises to Stiltner, he admitted that, as of the date of the DEC hearing, July 31, 2013, he still had not finalized the Ellison estate. Specifically, he needed to complete funding bonds; to present Stiltner with a final accounting for her approval; and to disburse to Stiltner the remainder of the estate's funds, in the amount of approximately $450,000.

In defense of the allegations of the complaint, respondent conceded that "[c]ommunication was sporadic . . . I should have spent more time trying to explain all of this to [Stiltner] and corresponding with her. I don't believe that what happened here was a violation of the RPCs." Respondent also admitted that he "should have been quicker," but did not agree that he lacked diligence as executor and administrator of the Ellison estate.

On June 14, 2012, the DEC investigator sent respondent a letter, enclosing the Stiltner grievance and requiring him to provide, within ten days, both a written response to the allegations and all documents germane to the investigation. At some point thereafter, the investigator telephoned Gerard E. Hanlon, Esq. (Hanlon), who had represented respondent in the prior ethics matters, to inquire whether he was representing respondent in this matter. On July 3, 2012, Hanlon sent a letter to the investigator, informing him that he represented respondent and would submit a response to Stiltner's grievance during the week of July 9, 2012.

As of August 2, 2012, no response had been submitted. Thus, the investigator e-mailed counsel, inquiring about the status of respondent's answer to the grievance. One week later, on August 9, 2012, counsel responded to the investigator's e-mail, indicating that he was awaiting receipt of information from

respondent. That same date, the investigator informed counsel that respondent's reply to the grievance was due no later than August 20, 2012, and cautioned that, if respondent did not submit a reply, the investigation report would be based solely on the information provided by Stiltner. No answer to the grievance was submitted by that deadline. Accordingly, between mid-August and late September, the DEC investigator made three telephone calls to counsel's office, leaving messages requesting respondent's reply to the grievance. Nevertheless, no reply to the grievance was submitted.

On September 27, 2012, the DEC investigator sent another letter to counsel, asking whether he still represented respondent and whether respondent intended to cooperate with the DEC investigation; the letter also demanded an immediate reply to the grievance. At the same time this letter was sent, counsel sent a letter to the investigator, reciting a brief statement of respondent's position regarding the grievance, and claiming that respondent was continuing to finalize Ellison's estate. Because this response did not enclose respondent's file or any other demanded documentation relating to the estate, on October 15, 2012, the investigator sent yet another letter to counsel, requiring that respondent cooperate with the DEC investigation and produce the demanded documents. In his letter, the

investigator set a deadline of October 25, 2012 for respondent's compliance.

Again, respondent did not comply with the investigator's requirements by that deadline. Thus, on October 25, 2012, the investigator sent another letter to counsel, which stated "[a]t the instruction of the District V-B Ethics Committee Chair, I am writing one last time to request these documents." The investigator set a deadline of November 1, 2012 for respondent's compliance, and cautioned that respondent's failure to comply could constitute a violation of RPC 8.1(b).

Again, respondent did not comply with the investigator's requirements by that deadline. However, given the occurrence of Superstorm Sandy, the investigator sent another letter to counsel, on November 13, 2012, extending the deadline for respondent's compliance to November 19, 2012. This letter once again cautioned that respondent's failure to comply could constitute a violation of RPC 8.1(b).

As of December 19, 2012, respondent had neither produced any of the documents requested by the investigator, nor offered any rationale or excuse for his failure to comply. Thus, the investigator filed the formal ethics complaint.

In defense of the allegation of his failure to cooperate with disciplinary authorities, respondent testified that, in

addition to the DEC case at hand, the OAE was investigating, on a parallel track, whether respondent had engaged in knowing misappropriation during his administration of the Ellison estate. This OAE investigation allegedly began in November 2012. Despite numerous letters and telephone calls between the parties, respondent, however, did not inform the DEC investigator of the separate OAE investigation until after the formal ethics complaint was filed. Respondent asserted that "there was confusion as to who was handling this matter, the OAE or [DEC]." Subsequently, in May of 2013, respondent submitted to the DEC investigator four binders of documents relating to the Ellison estate. Respondent had prepared and submitted these binders to the OAE in connection with the misappropriation investigation. As of the date of the DEC hearing on this matter, the OAE investigation had not been completed.[1]

Respondent testified that a psychiatric condition affected his responsiveness to the DEC investigator, stating "I did the best I could . . . Dr. Zaubler first gave me a prescription for Lexapro sometime in August . . . By the time that kicked in, the OAE was handling [the parallel investigation] . . . I cooperated with the OAE . . . I apologize to [the presenter] that you feel

[1] Ultimately, the OAE determined not to charge respondent with knowing misappropriation.

I didn't cooperate, but I did the best I could. You received all the documents that we provided to the OAE." Respondent acknowledged that he had not made an appointment with Dr. Zaubler until after he had received notice of the Stiltner grievance, but claimed he did so because counsel finally convinced him he may have a problem requiring medical assistance.

In mitigation, respondent testified that, during the administration of the Ellison estate, he was "suffering from anxious depression." In support of this diagnosis, respondent cited a June 4, 2013 letter from his treating psychiatrist, and explained that he began taking medication daily, beginning in August 2012, and his "ability to stay focused and to follow through has improved . . . I'm looking at things more positively." Respondent asserted that he was currently more "on top" of his work and that the administration of the Ellison estate was proceeding "more rapidly" as of the DEC hearing date.

Additionally, respondent claimed that he had failed to respond to the investigator's demands for information due, in part, to his psychiatric condition. He reiterated his belief that the OAE would be handling the whole matter, so he responded only to the OAE. Respondent testified that an OAE investigator had told him, prior to the DEC hearing, that he would soon be

cleared in respect of the knowing misappropriation investigation.

During oral argument before us, respondent represented that he had completed the administration of the Ellison Estate, including the filing of the estate tax return.

* * *

The DEC found that respondent lacked diligence in the administration of the Ellison estate. As of the date of the DEC hearing, approximately three-and-a-half years after Ellison died, the estate had not been finalized and respondent was unable to provide either a reasonable timeframe for completion or justification for the continued delay. Additionally, over a three-year period, respondent failed to respond to Stiltner's numerous calls and letters inquiring about the status of the estate and, when he did reply, his answers "were vague, lacking material substance and repeatedly contained false promises." While respondent disbursed to himself approximately $45,000 in legal fees and executor commissions between September 2010 and August 2011, he issued no funds from the estate to Stiltner, until September 2012, two years after he had first paid himself, and several months after Stiltner had filed the grievance.

Next, the DEC found that respondent failed to provide Stiltner with periodic accountings for the estate, which would

have alerted her each time funds were deposited for her benefit and disbursements were made to satisfy the debts and obligations of the estate. Additionally, the DEC found that respondent failed to provide credible justification for failing to cooperate with the DEC investigator, noting that not a single document was produced by respondent before the issuance of the complaint, despite the multiple requests and the generous latitude provided by the investigator.

Finally, the DEC found that, even if respondent's anxious depression was a factor in his handling of the Ellison estate, his treatment had commenced a year before the hearing and, yet, he still failed to finalize the estate, with no justification for the delay. Thus, the DEC rejected respondent's assertion that his psychiatric condition should be considered as a mitigating factor.

The DEC determined that respondent violated RPC 1.3, RPC 1.4(b), RPC 1.15(b), and RPC 8.1(b). Weighing respondent's 2013 admonition as an aggravating factor, the DEC unanimously recommended that dual sanctions be imposed on respondent - a reprimand for his violations of RPCs 1.3, 1.4(b), and 8.1(b), and an admonition for his violation of RPC 1.15(b).

* * *

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

Despite respondent's expertise in the preparation of wills and trusts and his prior administration of fifty to fifty-five estates, he failed to diligently administer and complete the Ellison estate between Ellison's death on October 25, 2009, and the DEC hearing on July 31, 2013. He advanced no compelling justification for this delay. Although respondent repeatedly defended his administration of the estate, the evidence established that he failed to complete even the most routine tasks required of him as executor. His lack of diligence commenced when he failed to adhere to the simple mandate of R. 4:80-6, which required that, within sixty days of probate, he mail to Stiltner, as beneficiary, a written notice "that the will has been probated, the place and date of the probate, the name and address of the personal representative, and a statement that a copy of the will shall be furnished upon request." Respondent did not send this notice to Stiltner for over five months, claiming that he had complied with the spirit of the Rule by discussing the estate with her via telephone.

Respondent's own testimony in respect of his unsuccessful efforts to open an estate account, rather than use his attorney

trust account, further undermines his claims of diligent efforts in administering the estate. Again, respondent failed to complete even the most rudimentary of actions required of him as executor of the Ellison estate. It was also not until after the grievance was filed that respondent sent Stiltner the Ellison estate documents that he had prepared, totaling two to three thousand pages. Notably, the documents were compiled in response to a knowing misappropriation investigation by the OAE, a threatening catalyst that finally commanded respondent's attention. By failing to attend to the Ellison estate, thus, respondent violated RPC 1.3.

Respondent admitted that he never sent Stiltner notices alerting her that specific estate funds were either deposited to or disbursed from his attorney trust account. Respondent argued that the notices were not necessary, as such matters were to be handled at the accounting of the estate that he provided to Stiltner in December 2012. His position, however, is inconsistent with RPC 1.15(b), which requires that "[u]pon receiving funds . . . in which a client or third person has an interest, a lawyer shall promptly notify the client or third person." Moreover, despite acknowledging that he had paid himself, in 2010 and 2011, attorneys' fees and executor commissions totaling almost $50,000, respondent did not make the

first disbursement of estate funds to Stiltner until 2012. Notably, this first disbursement was made after Stiltner filed the grievance. Respondent testified that he had initially intended to disburse funds to Stiltner in "one fell swoop," but the DEC properly rejected this position as failing to satisfy the requirements of R. 1.15(b). In fact, as of the date of the DEC hearing, July 31, 2013, respondent still had not finalized the Ellison estate and approximately $450,000, due to Stiltner, continued to languish in respondent's trust account. We, therefore, find that respondent's failure to promptly notify Stiltner of his receipt of her funds and his failure to promptly disburse those funds violated RPC 1.15(b).

Despite Stiltner's numerous and persistent attempts to communicate regarding the status of the estate, respondent consistently failed to return her calls. In 2011, Stiltner called respondent on fourteen occasions to inquire about the status of the administration of Ellison's estate – none of these calls were returned by respondent. Respondent also failed to adequately communicate when Stiltner asked her attorney, Tiller, to contact him for information regarding the administration of the Ellison estate. Respondent failed to reply to Tiller for a month, and then, when he finally did reply, he did not address Tiller's substantive questions. As the correctly DEC summarized,

all of respondent's communications with Stiltner in this matter "were vague, lacking material substance, and repeatedly contained false promises." Respondent's failure to communicate with Stiltner violated RPC 1.4(b).

In March 2012, her patience finally exhausted, Stiltner filed the ethics grievance against respondent. Although respondent conceded that he should have kept Stiltner better informed as to the status of the estate and acknowledged that her concerns were legitimate, in an attempt to deflect the allegations against him, respondent claimed that, after Stiltner had filed the grievance, she expressed regret for having done so and verbalized a desire to withdraw it. He, therefore, drafted a letter reflecting her alleged statements to him and sent it to her for her signature. Stiltner was adamant in her denial that she had ever indicated a desire to withdraw her grievance.[2]

Despite the DEC investigator's exhaustive efforts and extreme professional latitude, respondent failed to cooperate with the DEC investigation. The investigator's initial correspondence regarding the grievance was sent on June 14, 2012. As of December 19, 2012, respondent had neither produced a

[2] Respondent was not charged with a violation of RPC 8.4(d) in this respect.

single document demanded by the investigator, nor offered any rationale or excuse for his failure to comply.

Respondent explained that, in addition to the DEC case at hand, the OAE was investigating whether he had engaged in knowing misappropriation during his administration of the Ellison estate. Respondent asserted that his failure to cooperate with the DEC investigation was caused, in part, by his belief that the OAE would be handling both matters. He, therefore, asserted that, because he replied to the OAE investigator, he did not realize that he was also required to cooperate with the DEC investigation. He acknowledged, however, that he had not informed the DEC investigator of the separate OAE investigation until after the complaint was filed in December 2012. Moreover, respondent's asserted misunderstanding of his obligation to cooperate with the DEC investigator is belied by the eleven attempts – by letter, e-mail, and telephone – of the DEC investigator to obtain both a reply to the grievance and copies of documents. Finally, in May of 2013 – eleven months after the DEC's first request for information and five months after the DEC filed its complaint - respondent submitted four binders of documents, which had been prepared specifically for the OAE investigation, to the DEC investigator.

We find that respondent's failure to cooperate with the DEC investigation violated RPC 8.1(b).

In mitigation, respondent alleged that, during the administration of the Ellison estate, he was "suffering from anxious depression" and that his psychiatric condition affected his responsiveness to the DEC investigator. The DEC properly rejected respondent's arguments in support of this proposed mitigation. First, there is no evidence, other than respondent's self-serving testimony, to support his contention that his lack of diligence was caused by a psychiatric condition. No notice or evidence of any such condition had been provided to the DEC investigator prior to the hearing. Thus, the DEC hearing panel allowed no testimony to be offered to support a position that respondent was suffering from the anxious depression during his handling of the Ellison estate and the DEC's investigation of Stiltner's grievance. Second, although respondent claimed that his condition had improved and the estate was proceeding more rapidly, he still had not completed the estate by the time of the DEC hearing, four years later, further evidencing that respondent simply lacked diligence in his administration of the estate. Third, despite his alleged medical limitation, respondent was able to promptly compile thousands of pages of documents relating to the Ellison estate in response to the OAE

investigator's demands. In our view, this represents a unilateral and conscious decision by respondent to allocate his time and effort to addressing the more "serious" allegations in respect of his handling of the estate. Fourth, respondent's argument that he believed that the OAE was going to assume the DEC case is wholly unsupported in the record, which is replete with numerous requests for information from the DEC investigator. A mere belief that such events may occur does not excuse respondent's abject refusal to cooperate with the DEC investigation, especially when represented by seasoned ethics counsel.

The only remaining issue is the proper quantum of discipline for respondent's violations of RPC 1.3, RPC 1.4(b), RPC 1.15(b), and RPC 8.1(b). As a threshold issue, it is well-settled that RPC 1.4 requires an attorney administering an estate to be responsive to inquiries and requests made on a beneficiary's behalf. See, e.g., In the Matter of Michael K. Mullen, DRB 98-067 (April 21, 1999) (admonition imposed on attorney who, as the attorney for his grandmother's estate, failed to comply with a beneficiary's numerous requests for information about the progress of the matter) and In the Matter of Ronald E. Burgess, DRB 97-488 (April 27, 1988) (admonition

imposed on an attorney for an estate who, among other infractions, failed to communicate with the beneficiaries).

Standing alone, lack of diligence and failure to communicate with a client generally results in the imposition of an admonition. See, e.g., In the Matter of John David DiCiurcio, DRB 12-405 (July 19, 2013) (attorney was retained to file a bankruptcy petition and did no work on the file, other than to draft one letter to the client after being retained; the attorney did not inform the client that the reason he had not filed the petition was that the client had not paid his legal fee; the attorney had a prior reprimand for improper client solicitation letters); and In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012) (attorney failed to reply to his client's telephone calls and letters over an eleven-month period, and lacked diligence in handling the matter, as he failed to follow through on his agreement to file a complaint, an order to show cause, and other pleadings).

In isolation, cases involving an attorney's failure to promptly deliver funds to clients or third persons, in violation of RPC 1.15(b), usually result in the imposition of an admonition or reprimand, depending on the circumstances. See, e.g., In the Matter of Jeffrey S. Lender, 11-368 (January 30, 2012) (admonition imposed on attorney in a "South Jersey" style

real estate closing in which both parties opted not to be represented by a personal attorney in the transaction, the attorney inadvertently over-disbursed a real estate commission to MLSDirect, neglecting to deduct from his payment an $18,500 deposit for the transaction; he then failed to rectify the error for over five months after the over-disbursement was brought to his attention; violations of RPC 1.3 and RPC 1.15(b); we considered that the attorney had no prior discipline); In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition imposed on attorney who, in three personal injury matters, did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney also failed to properly communicate with the clients; we considered that the attorney had no prior discipline); and In re Dorian, 176 N.J. 124 (2003) (reprimand imposed on attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; prior admonition for gross neglect, failure to communicate, failure to withdraw, and failure to cooperate with disciplinary authorities; prior reprimand for gross neglect, lack of diligence, and failure to communicate).

When an attorney fails to cooperate with disciplinary authorities and previously has been disciplined, but the

attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 220 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

To craft the appropriate discipline in this case, we must consider both aggravating and mitigating factors. We do not consider respondent's prior admonition as an aggravating factor in this case. Although the unethical conduct under scrutiny here

is similar (lack of diligence and failure to communicate), it predates the imposition of discipline in the admonition matter. Accordingly, it cannot be said that respondent failed to learn from past mistakes and that progressive discipline requires enhancement of the discipline to be imposed.

Similarly, in our view, there is no basis in the record to support a finding of any mitigating factors. Respondent's claim of anxious depression, which was not supported by credible evidence, does not excuse or mitigate his repeated failures to complete even the most menial of tasks required to administer the Ellison estate, to communicate with Stiltner, or his abject failure to cooperate with the DEC investigation.

Under the totality of the circumstances, we determine to impose a censure for respondent's misconduct. Not only was his conduct substantial, it also visited harm upon Stiltner, whose receipt of the Ellison estate's funds was significantly delayed.

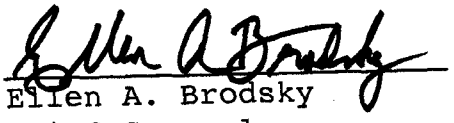
We further determine to require respondent to provide proof of completion of the administration of the Ellison estate within 30 days of the Court's Order in this matter. Specifically, respondent must provide, at a minimum, certified copies of (i) the Form 706 United States Estate Tax Return; and (ii) the estate Closing Letter provided by the Internal Revenue Service.

Members Gallipoli and Zmirich voted to impose a three-month suspension.

Vice-Chair Baugh 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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Peter A. Cook
Docket No. DRB 16-243

Argued: November 17, 2016

Decided: March 30, 2017

Disposition: Censure

Members	Censure	Three-month Suspension	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	6	2	1

Ellen A. Brodsky
Chief Counsel