

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-307
District Docket No. VIII-2015-0055E

IN THE MATTER OF
MICHAEL OSBORNE
AN ATTORNEY AT LAW

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Decision

Decided: February 14, 2018

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 District VIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). A one-count complaint charged respondent with violations of RPC 1.15(b) (safekeeping property) and RPC 8.1(b) (failure to cooperate with an ethics investigation). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1999.

By Court Order effective March 3, 2016, respondent was temporarily suspended for failure to comply with a fee arbitration determination. In re Osborne, 224 N.J. 248 (2016).

He remains suspended to date. We recently determined to impose a censure for respondent's failure to comply with R. 1:20-20, governing suspended attorneys. In the Matter of Michael Osborne, Docket No. DRB 17-183. That matter currently is pending with the Court.

Service of process was proper in this matter. On February 24, 2017, the DEC sent respondent, by certified and regular mail, a copy of the complaint at his last known home address listed in the attorney registration records. The certified mail receipt was returned, having been signed on March 11, 2017, but the signature is illegible. The regular mail was not returned.

On March 27, 2017, the DEC sent a second letter to respondent, also by certified and regular mail, to the same home address, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).

The second certified mailing to respondent was not claimed. The regular mail was not returned.

The time within which respondent may answer the complaint has expired. As of April 27, 2017, the date of the certification of the record, respondent had not filed an answer.

The allegations of the complaint are as follows. Respondent represented Maria Mignone in 2012 for an undisclosed legal matter. In early 2015, Mignone terminated the representation and retained subsequent counsel, D.M., the grievant herein.¹ Thereafter, D.M. made numerous attempts, by various methods, to obtain Mignone's client file, but respondent did not comply with those requests.

The complaint charged respondent with a violation of RPC 1.15(b) for his failure to turn over the client file to subsequent counsel upon termination of the representation. Presumably, the DEC intended to cite RPC 1.16(d), which addresses an attorney's failure to return property, such as the client's file, upon termination of the representation.

Between February 15, 2016 and February 2, 2017, investigators assigned to the case sent respondent a total of six letters requesting his written reply to the grievance. Respondent did not reply to any of those letters, for which the complaint charged a violation of RPC 8.1(b).

¹ It is unclear why initials were used to identify the grievant.

Although the complaint also alleged that respondent had not communicated with Mignone, "at any point in time to the date of [the] Investigative Report," the complaint did not charge respondent with having failed to communicate with the client (RPC 1.4(b)).

* * *

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

In 2012, respondent represented Mignone for a legal matter of an undescribed nature. In early 2015, she terminated the representation and retained subsequent counsel, the grievant, D.M. Thereafter, D.M. made numerous requests of respondent for the client file. Respondent's failure to comply with those requests violated RPC 1.16(d), which requires an attorney to take steps reasonably necessary to return client property upon termination of the representation.

Respondent also failed to reply to six letters from DEC investigators requesting information and a written reply to the grievance that D.M. had filed. Respondent then failed to file an answer to the formal ethics complaint, violations of RPC 8.1(b).

Although the complaint alleged that respondent did not communicate with the client, he was not charged with a violation of RPC 1.4(b). Therefore, we make no finding in that regard. R. 1:20-4(b).

Violations of RPC 1.16(d), often associated with an attorney's failure to return a client's file upon the termination of the representation, have yielded admonitions. See, e.g. In the Matter of Brian J. Muhlbaier, DRB 08-165 (October 1, 2008); In the Matter of Vinaya Saiiwani, DRB 07-211 (November 13, 2007); and In the Matter of William A. Thompson, III, DRB 07-118 (July 24, 2007).

Defaulting attorneys who fail to return client property upon termination of the representation, typically the client file or the unearned portion of the attorney's fee, have received reprimands. See, e.g. In re Werner, 213 N.J. 498 (2013) (attorney failed to return to the client the \$4,000 unearned portion of a fee in a divorce matter); In re Cioffi, 213 N.J. 87 (2013) (attorney failed to take steps to protect her client's interests upon termination of representation (RPC 1.16(d)); the attorney also failed to withdraw from the representation when a physical and/or mental condition materially impaired her ability to represent her clients (RPC 1.16(a)(2)), and failed to cooperate with the ethics investigation (RPC 8.1(b)); and In re

Hamill, 190 N.J. 333 (2007) (attorney failed to turn over clients' files after the representation was terminated, and failed to cooperate with the ethics investigation, violations of RPC 1.16(d) and RPC 8.1(b), respectively).

Like the attorneys in Werner, Cioffi, and Hamill, respondent violated RPC 1.16(d) and RPC 8.1(b), and permitted the matter to proceed to us as a default. With a reprimand as the starting point for the appropriate sanction, we determine to enhance the discipline to a censure, because this case represents respondent's second consecutive default.

Vice-Chair Baugh and Member Zmirich did not participate. Members Gallipoli and Rivera abstained.

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
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Osborne
Docket No. DRB 17-307

Decided: February 14, 2018

Disposition: Censure

<i>Members</i>	Censure	Abstained	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera		X	
Singer	X		
Zmirich			X
Total:	5	2	2


Ellen A. Brodsky
Chief Counsel