Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-178
District Docket No. XIII-2018-0019E

In the Matter of	:	
	:	Decision
Angela Jupin	:	
	:	
An Attorney at Law	:	
	:	
	:	

Argued: November 19, 2020

Decided: April 27, 2021

Richard Anthony Gantner appeared on behalf of the District XIII Ethics Committee.

Respondent did not appear, despite proper notice.

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

This matter previously was before us on a recommendation for an admonition filed by the District XIII Ethics Committee (DEC). On July 21, 2020, we determined to treat the matter as a recommendation for greater

discipline and to bring it on for oral argument. The formal ethics complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with a client), and RPC 8.1(a) (false statement of material fact in connection with a disciplinary matter).

For the reasons set forth below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1997. Respondent was ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection for the periods of September 20, 1999 to April 2, 2003; September 27, 2004 to May 23, 2006; September 24 to September 25, 2007; September 12 to September 29, 2016; June 4 to June 5, 2018; and July 22 to July 27, 2019. Effective September 14, 2020, respondent's status in the Central Attorney Management System was changed to "retired."

Respondent has no disciplinary history.

On January 7, 2016, Barbara Vinch, the grievant, retained respondent to pursue a personal injury matter arising from a May 18, 2015 automobile accident. Vinch's serious injuries included multiple facial fractures and a traumatic brain injury and were so severe that she needed to relearn how to consume solid foods and spent months recuperating.

Although respondent estimated Vinch's damages to be in excess of $1,000,000, she failed to file a complaint prior to the expiration of the applicable statute of limitations. Consequently, Vinch's potential claims were extinguished. Respondent claimed that her failure to file the complaint was justified, however, because Vinch had placed a limitation on litigation costs. Respondent, thus, maintained that she needed Vinch's authorization to proceed with litigation, and claimed that Vinch had failed to respond to her requests for guidance in respect of her case. In turn, Vinch maintained that she had authorized the filing of the complaint and believed that respondent had filed it nearly a year prior to the expiration of the statute of limitations. Moreover, Vinch testified that she had not received any communications from respondent seeking guidance.

On June 13, 2015, the Lawrence Township Police Department issued a report that concluded that Vinch was at fault in the accident. Prior to seeking respondent's assistance, Vinch spoke to two other attorneys who would not accept the representation because of that report. Thereafter, Vinch found respondent's contact information in an internet advertisement and contacted her, via e-mail, to determine whether she would accept the representation.

By e-mail dated November 30, 2015, respondent informed Vinch that she would accept her case on the conditions that Vinch would pay her own litigation expenses and that respondent would receive a contingent fee of twenty-five percent of any recovery. Respondent then explained that Vinch's initial costs would include a $250 filing fee and a $100 fee to serve the complaint. Respondent represented to Vinch that she would not have any other costs "unless and until we get to the point where we would have to take the deposition of the other driver . . . and [this] would happen about [six] months or so after the complaint is filed. However, the case may not even get to that point."

Respondent further explained that insurance companies usually seek to settle a case after a lawsuit is filed, because it shows that the plaintiff "mean[s] business and that they will have to spend a lot of time and money defending it." Further, respondent represented that, if the case did not settle, "the only other expense" that Vinch might incur would be the cost of retaining an expert accident reconstructionist. Respondent outlined her proposed plan, including assembling Vinch's medical records, which could include copying costs.

On January 7, 2016, Vinch retained respondent, executed a retainer agreement, and expressed her desire to seek damages from the other driver's insurance carrier, NJM Insurance Group (NJM). Vinch added a handwritten

instruction to the retainer agreement that read, "Sue NJM only. Also I am willing to pay expenses up to $4,000 to prove I am not at fault. If we have to stop due to expenses are to [sic] high. We have to agree that I will not owe any legal fees."

By e-mail dated January 15, 2016, respondent assured Vinch that she agreed with the handwritten instruction, and that, "if we need to stop pursuing the case because expenses exceed $4,000, which I do not anticipate at this time, you will not owe me any legal fees." Respondent further confirmed that Vinch's note, and respondent's reply e-mail, were "valid and binding as a supplement to the agreement." After executing the retainer agreement, Vinch paid respondent $300 toward the filing fee for her lawsuit.

By e-mail dated March 24, 2016, respondent informed Vinch that she had sent an initial demand letter to NJM but needed Vinch's medical records to support her claim and, thus, requested a medical release and the names of Vinch's medical providers. Respondent also explained that she would inform Vinch of any settlement offers from NJM, but if NJM did not engage in negotiations, she had prepared a "complaint that is ready to be filed."

On a date not set forth in the record, Vinch complained to the Lawrence Township Police Department (LTPD) that she had not been at fault in the

accident and requested further investigation. On April 22, 2016, upon completion of the investigation, the LTPD corrected the accident report, and concluded that Vinch was not at fault in the accident.

On April 29, 2016, respondent sent a lengthy demand letter to NJM, outlining the facts of Vinch's claim, her injuries, and her potential damages, and notifying NJM of the LTPD's amended accident report concluding that Vinch was not at fault.

In an August 23, 2016 letter, respondent informed Vinch that she had been discussing a pre-suit settlement with NJM. In furtherance of reaching a settlement without the need to file a lawsuit, respondent asked Vinch to provide additional medical records to forward to NJM, and an accounting of her paid and unpaid medical bills. Respondent claimed that her office sent this letter to Vinch by regular mail, but she could not identify the person who sent it, and denied having received a response from Vinch. In turn, Vinch denied having received this letter or having any issues with the delivery of her mail.

By letter dated November 10, 2016, respondent, without reference to her August correspondence, notified Vinch that she had sent a demand letter to NJM, and relayed NJM's request for additional medical records. In this correspondence, however, respondent informed Vinch that NJM was not willing

to settle because it was unclear "how the accident happened" and, further, that NJM may be unwilling to settle at that time because "we have not filed a lawsuit yet and they have no incentive to try to resolve the matter." Respondent explained that, to establish liability and to convince the insurance company to settle, it might be necessary to retain an expert accident reconstructionist. Respondent noted Vinch's limitation on costs and stated that, although she could not estimate the cost of such an expert, she believed that it would exceed Vinch's $4,000 limitation. She further explained that, because of the cost limitation set forth in the retainer agreement, she would need Vinch's consent before filing the lawsuit. Therefore, respondent asserted that, if Vinch wanted to move forward with a lawsuit, she would need to sign another retainer agreement that removed any limitation on costs. The letter included a proposed new retainer agreement. Further, respondent asked Vinch, if she decided to move forward, to provide additional funds for the filing fee costs, because the copying costs had exceeded the $300 that Vinch had advanced. Respondent again claimed that her office sent this letter to Vinch by regular mail; however, she could not identify who mailed it. She did not receive a response. Vinch again denied having received this letter.

On February 2, 2017, respondent sent a third letter to Vinch, stating that she was following up on her November letter; explaining that, because NJM had not made a settlement offer, they needed to file a lawsuit to pursue Vinch's claims; claiming that she previously had explained to Vinch that she could not "commence litigation without a new retainer agreement;" asking Vinch to inform respondent whether she wanted to move forward with filing the lawsuit; and noting that, on March 18, 2017, the statute of limitations was set to expire. Respondent again claimed that this letter was sent to Vinch by regular mail; however, she could not identify who mailed it, and did not receive a response. Vinch denied having received this letter.

By letter dated April 25, 2017, respondent informed Vinch that she had not received any response from her prior attempts to contact her, and that it was "imperative" that Vinch contact respondent "as soon as possible" if she desired to proceed with her claim. She again informed Vinch that the statute of limitations was scheduled to expire in "just a few short weeks." Respondent stated that she was "assuming from the lack of response" that Vinch was "no longer interested in moving forward," but would "appreciate the courtesy of a reply" so she could close her file. She enclosed another retainer agreement for Vinch to sign if she wanted to proceed with filing a lawsuit, but, if not, she also

enclosed a release stating that Vinch understood that the statute of limitations on her claim expired on May 18, 2017. Respondent again claimed this letter was sent to Vinch by regular mail; however, she could not identify who mailed it, and she did not receive a response. Vinch maintained that she never received this letter.

Respondent claimed to have made one other attempt to communicate with Vinch. Specifically, she testified that her office left at least one voicemail for Vinch to discuss whether to file the lawsuit; however, she could not recall whether she, or someone else, had made the call. Vinch denied receiving such a voicemail. Because respondent had not received a reply to her one telephone call and her four letters, she did not file a lawsuit, and the statute of limitations expired, extinguishing Vinch's claims.

By e-mail dated January 22, 2018, Vinch asked respondent about the status of her case. In reply, by e-mail dated February 5, 2018, respondent stated that she was surprised to hear from Vinch, because her four prior letters had gone unanswered. Respondent claimed that she "wanted to file suit, but the retainer was used up with all the copying costs and then some," so she "needed additional fees to file suit." Further, she asserted that, because of the contradictory police reports, NJM would not have done anything without an

expert reconstructionist, "which would cost several thousand dollars." Respondent did not want to retain such an expert without Vinch's approval and payment of the expert's cost. In addition, respondent claimed that she could not file the lawsuit, because she performed a "preliminary search" and could not find the name of the other driver.[1] Respondent further claimed that she had called Vinch once, and because she did not hear from Vinch, even after she sent several letters, she never filed a complaint and the statute of limitations had expired. At that point, respondent was no longer practicing law, but, because she wanted to ensure that her clients were taken care of before she retired, she "was really bothered" that she "never heard back from" Vinch. She claimed that she "assumed that either you no longer wanted to pursue the case or you did not want to put out all the money it would take to prove the case."

In an undated communication to respondent, Vinch admitted having received a copy of one of respondent's letters to NJM, but denied receiving any further contact from respondent, until the February 5, 2018 e-mail. Vinch explained that she had not called respondent, because Vinch already had agreed to file a lawsuit against NJM, knew that lawsuits take years, and did not

[1] In this regard, we note that the other driver's name is apparent from the police reports.

understand how she could be barred from filing a lawsuit, based on respondent's letters to NJM. Vinch wrote that she was "hurt bad" and still had problems from the accident, and asked respondent to "please help" her because Vinch was sixty-five years old and "depending on" respondent.

During the ethics hearing, respondent asserted that she believed that Vinch had not authorized her to file a complaint, based on Vinch's handwritten limitation to the original retainer agreement, and that Vinch did not want to pursue the litigation, because she had been unresponsive to respondent's multiple letters. Respondent defended sending letters to Vinch only by regular mail, and offered letters from Vinch to respondent, sent by regular mail, to show that, despite their initial communications via e-mail, Vinch had informed respondent she did not always check her e-mail, and instead would respond to respondent's communications via letters. Respondent also asserted that it was her practice to write letters to clients because it was more formal than an e-mail.

Based on these facts, the complaint alleged that respondent violated RPC 1.3, because she "knowingly allowed the statute of limitations to run without clear direction from" Vinch; that respondent violated RPC 1.4(b), because she failed to take "reasonable steps" to contact Vinch; and that respondent violated RPC 8.1(a), because she represented to the DEC that she wrote letters to Vinch,

which appeared not to have been sent.

In turn, respondent denied that she had violated any RPCs. She offered three affirmative defenses: she was not authorized to file suit in behalf of Vinch, given the limitation Vinch had placed via the handwritten note on the retainer agreement; this matter was better addressed as a legal malpractice case,[2] not an ethics matter; and, if respondent had filed a complaint, Vinch could have complained that respondent exceeded the scope of the retainer agreement.

The panel rejected respondent's interpretation of Vinch's handwritten note and found, instead, that the language of the limitation, and the communication between Vinch and respondent, made clear that Vinch had authorized respondent to file a complaint. Thus, the panel found that respondent violated RPC 1.3 by failing to file the complaint in behalf of Vinch, because "the prudent course of action" would have been for respondent to file a complaint to protect Vinch's rights based on their prior communication, the

[2] The Court has commented upon whether a violation of the Rules of Professional Conduct can be used to establish civil liability for malpractice and has concluded that a violation does not automatically give rise to a civil cause of action. Baxt v. Liloia, 155 N.J. 190, 197, 201 (1998); see also Kevin H. Michels, New Jersey Attorney Ethics, 46:1 at 1229-30 (Gann 2021). However, respondent's argument here was the opposite – that the availability of a civil malpractice cause of action should restrain or forestall action by the disciplinary system, which is "designed to protect the public and "the integrity of the profession." Baxt, 155 N.J. at 202. We see no support for such a proposition in precedent or Court Rules. See R. 1:20-2(b) (describing the authority of the Director).

value of the claim, and the significant medical costs Vinch had incurred.

The panel also found that respondent violated RPC 1.4(b) by failing to adequately communicate with Vinch about the need to file the complaint before the statute of limitations expired. Specifically, the panel found that, by failing to attempt to communicate with Vinch in ways other than regular mail, such as by sending Vinch a certified letter or an e-mail, or by making additional attempts to contact her by telephone, respondent violated this Rule. The panel reasoned that, because respondent had no evidence that Vinch had received her letters, and respondent made no other attempt to contact her in writing, respondent had failed to adequately communicate.

The panel found insufficient evidence for it to conclude that respondent violated RPC 8.1(a), despite its finding that Vinch credibly testified that she had not received respondent's letters informing her about the statute of limitations. The DEC found no evidence to support the conclusion that respondent had fabricated the letters in an attempt to mislead the DEC investigator, because there were "other plausible explanations" for Vinch's failure to receive these letters, such as respondent's office mishandling them.

In mitigation, the panel determined that respondent had no disciplinary history, and that her misconduct affected only one client. The panel recommended that respondent receive an admonition.

During oral argument before us, the presenter expressed renewed concern about the validity of respondent's letters and requested the imposition of an admonition.

We find that the panel's determination that respondent violated RPC 1.3 and RPC 1.4(b) is supported by clear and convincing evidence. Based on respondent's failure to take reasonable steps to protect Vinch's interests in respect of her personal injury claims, and the resulting significant economic harm to Vinch, we determine that an admonition is insufficient discipline.

Vinch suffered significant injuries, including a traumatic brain injury, as a result of an automobile accident. These injuries resulted in substantial medical bills, and a potential personal injury claim that respondent valued at in excess of $1,000,000. Despite Vinch's need to seek redress through litigation, due to NJM's unwillingness to settle, respondent elected not to file a lawsuit because of her claimed interpretation of Vinch's limitation on the retainer agreement, and because of her perception that she required additional communication from Vinch.

Respondent, however, violated RPC 1.3 by failing to file a complaint on Vinch's behalf prior to the expiration of the statute of limitations. Respondent's defense regarding the supposed limitation imposed by Vinch's handwritten note is undermined by its very first sentence: "sue NJM only." The limitation was intended to stop litigation costs from exceeding the sum of $4,000, not to preclude commencing the lawsuit in the first place. Based on the plain reading of this handwritten note, respondent was authorized to file suit, and should have done so, to protect Vinch's claim. Moreover, respondent had explained to Vinch that NJM might not seriously consider her claim unless she filed a lawsuit. Thus, respondent should have filed the lawsuit, both to prevent the expiration of the statute of limitations and to promote settlement of her client's serious personal injury claim.

To that end, respondent also violated RPC 1.4(b), because she failed to adequately inform Vinch of the status of the matter and to ensure that Vinch received the sensitive communications regarding the statute of limitations. Despite respondent's explanation for sending correspondence through regular mail, she clearly had alternative means to communicate with Vinch, which included certified mail, personal service, and e-mail. Due to the seriousness of the potential claim, and the fast-approaching statute of limitations,

respondent's failure to ensure adequate communication fell below the standard of a reasonable attorney.

We find that the panel properly dismissed RPC 8.1(a). The record must support respondent's actual knowledge that she was making a false statement to the DEC, and thus, that she had "actual knowledge of the fact in question." See RPC 1.0(f). Circumstantial evidence can support a finding of actual knowledge. Ibid. The complaint asserted that respondent violated RPC 8.1(a) when she informed the investigator that she had written and sent letters to Vinch regarding the pending statute of limitations. The panel found that Vinch credibly testified that she had not received the letters, but also concluded that there was no evidence that respondent fabricated these letters in an attempt to mislead the DEC investigator, because there were "other plausible explanations" for Vinch's failure to receive these letters.

The Court described the clear and convincing standard in In re James, 112 N.J. 580 (1988), as

> [t]hat which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."
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> [Id. at 585 (citations omitted)].

Although there is no mechanistic requirement for corroboration of evidence, a trier of fact must be able to "impose discipline with clarity and conviction." In re Seaman, 133 N.J. 67, 84 (1993) (quoting In re McDonough, 296 N.W.2d 648 (Minn.1979)).

Thus, for the presenter to establish a violation of RPC 8.1(a), the record must establish that, at the time that respondent made her statement to the DEC, she had actual knowledge that it was false. The record does not support that finding here. See, In re Purrazzella, 134 N.J. 228 (1993) (the Court dismissed charges alleging violations of RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 4.1, and RPC 8.4(c) because of a lack of clear and convincing evidence that the attorney knowingly submitted a fraudulent document to a court during a matrimonial matter). Thus, we dismiss the RPC 8.1(a) charge.

In sum, we find that respondent violated RPC 1.3 and RPC 1.4(b) and determine to dismiss the RPC 8.1(a) charge.[3] The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

[3] Respondent also violated RPC 1.1(a) (gross neglect) by failing to file Vinch's complaint prior to the expiration of the statute of limitations, but she was not charged with violating that Rule and we cannot make that finding.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who, for nine months after her retention to obtain a divorce, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who

grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a personal injury case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a $300 filing fee, permitting the order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

Here, based on applicable disciplinary precedent, the baseline level of discipline for respondent's combined violations is an admonition. To craft the

appropriate discipline in this case, we also must consider both mitigating and aggravating factors.

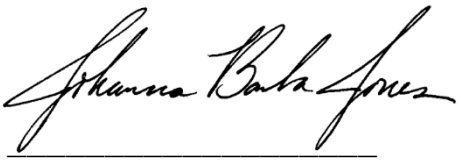
In mitigation, respondent has no prior discipline in twenty-three years at the bar. In aggravation, however, respondent's purported explanation for her failure to file a complaint on behalf of Vinch is simply unreasonable, and her misconduct directly resulted in significant economic harm to Vinch, whose cause of action for her serious injuries was completely extinguished.

On balance, given the serious harm to the client, the aggravation clearly outweighs the mitigation. We thus determine that a reprimand is the necessary quantum of discipline to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Joseph, Rivera, and Zmirich voted to impose a censure.

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
Bruce W. Clark, Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Angela Jupin
Docket No. DRB 20-178

Argued: November 19, 2020

Decided: April 27, 2021

Disposition: Reprimand

Members	Reprimand	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph		X		
Petrou	X			
Rivera		X		
Singer	X			
Zmirich		X		
Total:	5	4	0	0

Johanna Barba Jones
Chief Counsel