

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-083
District Docket No. XIII-2021-0004E

In the Matter of

Anmarie F. De Primo

An Attorney at Law

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Decision

Decided: September 28, 2021

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

This matter was before us on a certification of the record filed by the District XIII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 8.1(b) (two

instances – failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).¹

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

Respondent was admitted to the New Jersey and New York bars in 2006. She has no prior discipline in New Jersey and maintains a practice of law in Somerville, New Jersey.

Service of process was proper. On September 23, 2020, the DEC sent copies of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail was neither claimed nor returned, and the regular mail was not returned.

Thereafter, on November 23, 2020, the DEC sent a letter, by certified and regular mail, to respondent's office address, informing her that, unless she filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b) and RPC 8.4(d).

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the DEC amended the complaint to include the second RPC 8.1(b) charge and the RPC 8.4(d) charge.

The certified mail was neither claimed nor returned, and the regular mail was not returned.

As of the filing of the April 1, 2020 certification of the record, respondent had not filed an answer to the complaint, and the time within which she was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On May 24, 2021, the OBC published a notice to the Bar in the New Jersey Law Journal, stating that the matter had been certified to us as a default. That notice informed respondent that, unless she filed a motion to vacate the default (MVD) by June 9, 2021, her failure to answer would be deemed an admission of the allegations of the complaint.

Moreover, on June 9, 2021, the OBC received from respondent a letter, requesting an extension of time to file an MVD. In a June 9, 2021 reply letter, Chief Counsel of the OBC granted respondent's request, allowing her until June 23, 2021 to file an MVD. However, respondent did not do so.

We now turn to the allegations of the complaint.

On October 23, 2018, the grievant, Paul Gattuso, filed an ethics grievance asserting that respondent had represented him in a real estate closing and had failed to notice that "reimbursement for his October tax credit was not included

in the closing paperwork.” The complaint alleged that, “[o]nce this error was communicated to her, despite her agreement that there was an error and [her initial communication] that she would resolve it, she has since ignored all communication and failed to communicate or resolve the outstanding issue.” Gattuso subsequently followed up with respondent via text messages, e-mails, and telephone calls, to which respondent failed to reply. The complaint, thus, alleged that respondent failed to keep Gattuso informed of the status of his matter and to reply to his requests for information, and further failed to take remedial action after representing that the error would be “taken care of.”

During the resulting ethics investigation into the grievance, respondent failed to reply to letters from the DEC investigator. By letter dated February 27, 2019, the DEC investigator forwarded to respondent the grievance and requested a written reply regarding the Gattuso matter. Respondent failed to reply. On May 23, 2019, the DEC investigator followed up the February request with a second letter, indicating that if respondent failed to reply within ten days, it would be assumed that no response was forthcoming, and the investigation would proceed accordingly. Despite her obligation to cooperate, pursuant to R. 1:20-3(g)(3), respondent again failed to reply.

Based on the foregoing facts, the DEC filed the formal ethics complaint, charging respondent with having violated RPC 1.3; RPC 1.4(b); RPC 8.1(b) (two instances); and RPC 8.4(d).

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

Specifically, the record supports the allegations that respondent violated RPC 1.3 and RPC 1.4(b). After acknowledging that she had committed an error during Gattuso's closing, to his financial detriment, and representing to him that she would correct her error, respondent utterly failed to act. Subsequently, respondent failed to communicate with Gattuso, despite his repeated efforts, through various means, to press her to action. Consequently, respondent violated RPC 1.3 and RPC 1.4(b).

Moreover, the DEC sent respondent notice of Gattuso's grievance on February 27 and May 23, 2019, in both instances informing her that she had ten days to reply. Respondent's failure to reply to the grievance or to cooperate with the DEC constituted a violation of RPC 8.1(b). After being served with the ethics

complaint on September 23, 2020, as well as the follow-up letter on November 23, 2020, respondent neither replied to the DEC nor requested an extension of time to answer the complaint. This constituted a second violation of RPC 8.1(b) as well as a violation of RPC 8.4(d).

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 8.1(b) (two instances); and RPC 8.4(d). The sole question left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Recently, in In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021), we considered similar misconduct, in which the attorney promised to take action to remit his client's payment toward an owed inheritance tax. Despite respondent's assurances that he would act, respondent failed to remit the payment until two years later. Respondent also failed to return his client's telephone calls or to reply to correspondence. In that matter, we found violations of RPC 1.3 and RPC 1.4(b) and, in imposing only an admonition, considered, in mitigation, respondent's unblemished disciplinary history in more than twenty-five years at the bar.

In another analogous matter, In the Matter of Kevin D. Sisco, DRB 19-462 (April 21, 2020), the attorney was retained to file a motion, on behalf of his client, to reduce an alimony obligation. The attorney failed to file the motion or

to respond to his client's reasonable requests for information. Further, the attorney failed to cooperate with disciplinary authorities. In that matter, we found violations of RPC 1.1; RPC 1.3; RPC 1.4(b); and RPC 8.1(b) and, in imposing only an admonition, considered, in mitigation, respondent's unblemished disciplinary history in almost thirty years at the bar; his articulated contrition and remorse; his ready admission of wrongdoing via his stipulation to his misconduct; and his refund of the entire fee to the client.

Here, respondent presents none of the mitigation present in LaMonica or Sisco. Both of those attorneys had unblemished disciplinary histories spanning more than two decades. LaMonica ultimately completed the legal services owed to his client. Sisco disgorged his fee and entered into a stipulation, admitting his misconduct. Consequently, respondent's violations of RPC 1.3, RPC 1.4(b) and RPC 8.1(b) warrant a reprimand.

In crafting the appropriate discipline, however, we also must consider mitigating and aggravating factors. In mitigation, respondent has no disciplinary history in fifteen years at the bar.

In aggravation, unlike the attorneys in LaMonica and Sisco, who participated in the disciplinary process, respondent defaulted. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an

aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

In this matter, respondent’s default, alone, is sufficient aggravation to support an enhanced penalty. Our determination to impose a censure is further supported by the financial harm to Gattuso which he was unable to resolve by any means short of a grievance. Thus, we determine that a censure is the appropriate discipline to protect the public and preserve the integrity of the bar.

Chair Gallipoli voted to impose a three-month suspension.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Annmarie F. De Primo
Docket No. DRB 21-083

Decided: September 28, 2021

Disposition: Censure

<i>Members</i>	Censure	Three-Month Suspension
Gallipoli		X
Singer	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1



Johanna Barba Jones
Chief Counsel