

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 21-191  
District Docket No. XIV-2020-0219E

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In the Matter of  
Michele S. Austin  
An Attorney at Law

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Decision

Decided: February 25, 2022

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 Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.15(b) (failure to promptly deliver

to the client funds that the client is entitled to receive); RPC 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests, including failing to refund any advance payment of fee that has not been earned or incurred); RPC 5.5(a)(1) (unauthorized practice of law); RPC 8.1(a) (false statement of material fact in a disciplinary matter); and RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).<sup>1</sup>

For the reasons set forth below, we determine to impose a one-year suspension, with a condition.

Respondent earned admission to the New Jersey bar in 2009. She has no prior discipline. During the relevant times, she maintained a law firm, Austin & Stein, located in Hackensack, New Jersey.

Effective November 21, 2016, the Court declared respondent administratively ineligible to practice law in New Jersey for failure to comply with continuing legal education requirements.

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<sup>1</sup> Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the second RPC 8.1(b) charge.

Effective August 28, 2017, the Court declared respondent administratively ineligible to practice law in New Jersey for failure to pay her annual assessment to the Lawyers' Fund for Client Protection (the Fund).

Effective March 11, 2021, the Court temporarily suspended respondent for her failure to cooperate in the OAE's investigation underlying DRB 21-191 and restrained all disbursements from her attorney bank accounts. In re Austin, 245 N.J. 383 (2021).

Effective May 24, 2021, the Court again temporarily suspended respondent for her failure to comply with a District IIIB Fee Arbitration Committee determination that she refund \$2,500 to a client. In re Austin, \_\_\_ N.J. \_\_\_ (2021); In the Matter of Michele S. Austin, DRB 21-023 (March 24, 2021).

To date, respondent remains administratively ineligible, in both respects, and temporarily suspended, in both respects.

Service of process was proper. On June 16, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified mail to respondent's home address was

returned on July 7, 2021, marked with respondent's forwarding address. The regular mail was returned with the same forwarding address.<sup>2</sup>

Therefore, on July 14, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's new home address. The United States Postal Service tracking documentation indicated that the certified mail to respondent's new home address was delivered on July 21, 2021. The certified mail return receipt card was returned to the OAE indicating delivery on July 20, 2021 and signed "CO[VI]D19." The regular mail was not returned.

On August 13, 2021, the OAE sent a second letter to respondent's new home address, by regular mail, 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). The regular mail was not returned.

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<sup>2</sup> New Jersey attorneys have an affirmative obligation to inform both the Fund and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c); Notice to the Bar, "Mandatory Online Attorney Annual Registration Beginning in 2016" (May 1, 2015).

As of August 30, 2021, respondent had not filed an answer to the complaint, and the time within which she was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

Moreover, on October 4, 2021, the Office of Board Counsel published a notice in the New Jersey Law Journal, stating that we would consider this matter on November 18, 2021. The notice informed respondent that, unless she filed a successful motion to vacate the default by October 12, 2021, her failure to answer would remain deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

### **Misconduct in Estate Matter**

In July 2014, the grievant, Allen Jakubiec, retained respondent to represent him in a dispute with his sister over the estate of their late brother. In accordance with the retainer agreement, Jakubiec paid respondent a \$3,000 retainer fee and agreed to respondent's \$250 hourly rate.

Respondent maintained two bank accounts with Valley National Bank in connection with her law practice: an attorney trust account (ATA), and an attorney business account (ABA), which was closed in May 2018. She deposited Jakubiec's \$3,000 check in her ABA.

On October 10, 2014, Jakubiec provided respondent with a check for \$28,387, representing funds from the estate, to be held by respondent pending the resolution of the estate dispute. That same day, respondent deposited the estate funds in her ATA.

After providing the estate funds, Jakubiec repeatedly attempted to contact respondent, to no avail. According to the complaint, respondent completed no additional work for Jakubiec and failed to provide Jakubiec with any billing invoices. Five years later, in November 2019, Jakubiec visited respondent's law office, hoping to discuss the estate matter, but found the office vacant. Respondent failed to inform Jakubiec that she had closed her practice.

On May 13, 2020, Jakubiec, through his new attorney, Andrew P. Bolson, Esq., filed an ethics grievance against respondent, alleging that she failed to respond to his attempts to contact her and failed to return the \$28,387 that she held in her ATA for his brother's estate. The OAE docketed the matter for investigation.

On June 23, 2020, an OAE investigator and a deputy ethics counsel contacted Jakubiec and Bolson by telephone. Jakubiec informed them that, from 2014 through 2019, he assumed respondent was working on his case. Between October 2014 and November 2019, Jakubiec attempted to contact

respondent by visiting her office three times. On one occasion, Jakubiec met respondent's secretary, who assured him that he would hear from respondent soon. He also called and left messages, none of which respondent returned. Indeed, after providing the \$28,387 check to respondent, Jakubiec did not hear from her again.

In an August 14, 2020 letter, received by the OAE on August 26, 2020, respondent replied to Jakubiec's grievance, representing that, when she became administratively ineligible to practice law, she closed her law practice. Although respondent failed to provide the date on which she closed her practice, she was deemed administratively ineligible to practice law in November 2016. Respondent acknowledged that Jakubiec retained her in 2014, and that she deposited the \$28,387 in estate funds in her ATA. However, respondent claimed that she did "preparatory work to file a complaint" and tried to contact Jakubiec on numerous occasions, via telephone and letter correspondence, but that "he never responded to any of my correspondence. I do not know why he stopped communicating with me; I only know that he did." Further, respondent asserted that, when she closed her practice, she wrote to Jakubiec and offered to return the estate funds to him or to another attorney of his choosing, but he did not reply. Respondent stated that she sent that letter by certified and regular mail, and that while certified mail receipt was not

signed, the regular mail was not returned. She claimed that she also attempted to contact Jakubiec by telephone, to no avail. Respondent further stated:

Unfortunately, at this point in time, because I do not have a permanent residence, as I mentioned over the phone to you, Mr. Jakubiec's file is in storage that I cannot easily access. Copies of the correspondence I sent to him are in that file. Similarly, the checkbook for my attorney trust account is in that storage space. To remedy this matter, I would be happy to transfer the \$28,387 to an account managed by the Office of Attorney Ethics so that you may return it to Mr. Jakubiec. I would like nothing more than to have that money returned to him.

[Ex.10.]<sup>3</sup>

Thus, despite deciding to close her practice, respondent failed to disburse the client and trust funds she held in her ATA to the relevant parties.

On December 11, 2020, the OAE filed with the Court a petition for temporary suspension, seeking respondent's immediate suspension due to her failure to cooperate with the investigation into Jakubiec's matter.

On March 11, 2021, the Court entered an Order temporarily suspending respondent from the practice of law for her failure to cooperate in the

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<sup>3</sup> Ex. refers to the exhibits to the formal ethics complaint, dated June 3, 2021.



investigation of this matter. In re Austin, 245 N.J. 383 (2021). Pursuant to the Order, the funds in respondent's ATA, totaling \$46,569.69, were frozen. Ibid.

The OAE's review of respondent's ATA confirmed that, since October 2014, when respondent deposited Jakubiec's \$28,387 in her ATA, the funds were held, inviolate.

Based on the foregoing, the first count of the formal ethics complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.15(b); and RPC 1.16(d).

### **Practice of Law While Ineligible**

As noted above, on November 21, 2016, the Court declared respondent administratively ineligible to practice law for her noncompliance with New Jersey's continuing legal education requirements. To date, her eligibility has not been restored.

In her August 14, 2020 letter reply to Jakubiec's grievance, respondent indicated that, when she was declared administratively ineligible to practice in November 2016, she closed her law practice and ceased practicing law. Specifically, respondent stated, "[w]hen I was administratively withdrawn from the practice of law in NJ, I closed my practice." However, the OAE's review of respondent's ATA records revealed fourteen occasions, in 2017 and

2018, in which she executed ATA checks or deposited funds in her ATA, in connection with real estate matters. The OAE's search of online public land records and corresponding deeds further revealed that respondent prepared deeds and witnessed signatures of her clients on the deeds in connection with those matters.

Based on the foregoing, count two of the formal ethics complaint charged respondent with having violated RPC 5.5(a)(1) and RPC 8.1(a).

### **Failure to Cooperate with Disciplinary Authorities**

On May 19, 2020, the OAE sent respondent a letter, via e-mail, enclosing Jakubiec's grievance and directing her to provide a written reply by June 2, 2020. The e-mail was not returned as undeliverable, however, respondent failed to reply.

Between June 5 and August 3, 2020, the OAE made numerous attempts to contact respondent regarding her required reply to the Jakubiec grievance. On August 3, 2020, respondent finally contacted the OAE, via telephone, and left a voicemail message. OAE staff returned respondent's call and spoke with her about their prior attempts to contact her regarding the Jakubiec grievance. Respondent confirmed that the telephone number and the e-mail address the OAE had used, since July 7, 2020, were accurate.

The next day, the OAE sent respondent another letter, via e-mail, enclosing the Jakubiec grievance and directing respondent to reply by August 17, 2020. The e-mail was not returned as undeliverable.

On August 24, 2020, the OAE sent a letter to respondent, via e-mail, scheduling a demand audit on September 22, 2020, and requesting certain financial records by September 8, 2020. Again, the e-mail was not returned as undeliverable.

On August 26, 2020, the OAE received respondent's letter reply to the grievance, dated August 14, 2020.

On September 1, 2020, the OAE sent an e-mail to respondent reminding her of both the September 8 due date for records and the September 22 demand audit. The e-mail was not returned as undeliverable, however, respondent both failed to provide the records and failed to appear for the scheduled demand audit. On the day of the demand audit, September 22, 2020, the OAE attempted to contact respondent by telephone and left a voicemail, but respondent failed to return the call.

Thereafter, the OAE filed the aforementioned petition for respondent's immediate temporary suspension, to which she failed to reply. Consequently, effective March 11, 2021, the Court temporarily suspended her. In re Austin, 245 N.J. 383 (2021).

Based on the foregoing, the third count of the formal ethics complaint charged respondent with having violated RPC 8.1(b).

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

Specifically, the record supports the allegations that respondent committed gross neglect and lacked diligence in her handling of the Jakubiec matter. In fact, she abandoned Jakubiec. After having been retained to represent Jakubiec in the estate dispute with his sister, respondent took both the retainer check and the estate funds and deposited them in her attorney accounts. Yet, for years, she took no further action to advance Jakubiec's interests. Although respondent claimed that she attempted to prepare a complaint on Jakubiec's behalf, she produced no evidence of having done so, merely claiming, in her reply to Jakubiec's grievance, that she did not have access to her files.

Consequently, the Jakubiec matter sat idle for five years, from 2014 through 2019. In that period, Jakubiec was unable to get any information regarding the case, absent his own investigation and his retention of a new

attorney. Despite having been paid her \$3,000 fee, respondent performed no work for Jakubiec. She then closed her practice, unilaterally and improperly terminated her representation of Jakubiec, and failed to return the unearned \$3,000 fee – textbook abandonment of a client. Respondent, thus, violated RPC 1.1(a), and RPC 1.3, and RPC 1.16(d).

Next, despite Jakubiec's numerous attempts to contact respondent regarding the status of his matter by telephone, letter, and personal visits to her office, respondent failed to return his calls or otherwise provide him with any information in violation of RPC 1.4(b). Respondent's contention in her letter reply to the grievance, that she had attempted to contact Jakubiec, was not supported by file notes, telephone bills, e-mails, or correspondence. Moreover, given her default in this matter, she is deemed to have admitted the facts set forth in the complaint.

Additionally, when respondent closed her practice, she failed to promptly deliver to Jakubiec the entrusted estate funds she was holding, inviolate, in her ATA. Instead, the funds remained in her account, requiring Jakubiec to hire another attorney to attempt to induce respondent to disgorge the estate funds. By closing her law practice without distributing the entrusted estate funds to her client, respondent caused significant harm to Jakubiec, and violated RPC 1.15(b). Jakubiec, despite having hired another attorney, has yet

to receive the estate funds, forcing him to file a grievance with the OAE and seek relief through the Fund.

Respondent committed additional misconduct unrelated to the Jakubiec matter. Specifically, the OAE's investigation revealed that, in 2017 and 2018, despite her administrative ineligibility to practice law, she represented at least two clients in real estate matters, as corroborated via both her ATA records and recorded deeds. Because she has been administratively ineligible to practice law in New Jersey since November 21, 2016, respondent's practice of law in 2017 and 2018 violated RPC 5.5(a)(1).

Moreover, based on her 2017 and 2018 real estate work, respondent's statement to the OAE that she had closed her practice "when [she] was administratively withdrawn" constituted a misrepresentation of material fact to disciplinary authorities and, thus, violated RPC 8.1(a).

Finally, on numerous dates, the OAE provided respondent with an opportunity to reply to the grievance, to attend the demand audit, and to defend her conduct underlying this matter. However, respondent chose not to cooperate with the OAE's investigation. She failed to return calls; answer letters; reply in a timely manner to the grievance; or appear for the demand audit, demonstrating a complete disregard for the disciplinary process. By failing to cooperate with disciplinary authorities, respondent violated RPC

8.1(b) in two ways: first, by failing to cooperate with disciplinary authorities, and second, by failing to answer the formal ethics complaint.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.15(b); RPC 1.16(d); RPC 5.5(a)(1); RPC 8.1(a) and RPC 8.1(b) (two instances). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

The crux of respondent's misconduct was her abandonment of Jakubiec.

Abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities; prior three-month suspension); In re Hoffmann, 163 N.J. 4 (2000) (three-month suspension in a default matter; the attorney closed his office without notifying four clients; he also was guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination of representation, and failure to cooperate with disciplinary authorities; prior reprimand and a three-month suspension); In re Perdue, 240 N.J. 43 (2019) (in three consolidated default matters, six-month suspension imposed on attorney who, in two of the matters,

abandoned his clients; the attorney also exhibited gross neglect and lack of diligence, failed to communicate with the clients, failed to return the file to one of the clients, and made misrepresentations to the clients; in all three matters, the attorney failed to submit a written reply to the grievance); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect; lack of diligence; failure to communicate with the clients; failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation; failure to provide a written fee agreement; failure to protect a client's interests upon termination of representation; and misrepresenting the status of a matter to a client; prior private reprimand); In re Milara, 237 N.J. 431 (2019) (in two default matters, one-year suspension imposed on attorney for the totality of his misconduct, which included the abandonment of two clients, one of whom suffered serious harm as a result; misrepresentations to the clients, failure to file an affidavit of compliance with R. 1:20-20 following a temporary suspension for failure to cooperate with the OAE and a second temporary suspension for failure to comply with a fee arbitration determination, and other conduct prejudicial to the administration of justice; at the time, a censure was pending before the Court, which entered



an Order confirming our decision); In re Rosenthal, 208 N.J. 485 (2012) (in seven default matters, one-year suspension imposed on attorney who exhibited gross neglect and a pattern of neglect in two matters; lacked diligence in four matters; failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in one matter; charged an unreasonable fee in three matters; failed to communicate in writing the basis or rate of his fee in one matter; failed to expedite litigation in one matter; failed to cooperate with disciplinary authorities in seven matters; engaged in dishonesty in two matters; and engaged in conduct prejudicial to the administration of justice in two matters; he also abandoned six of the seven clients; attorney had unblemished disciplinary history in his more than twenty years at the bar); In re Basner, 232 N.J. 164 (2018) (motion for reciprocal discipline; two-year suspension imposed on attorney who exhibited gross neglect in eight matters, engaged in a pattern of neglect, exhibited lack of diligence in ten matters, failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding

the representation in eight matters; failed to comply with the recordkeeping requirements of R. 1:21-6; failed to withdraw from the representation of a client when the representation violated the RPCs or other law; upon termination of representation, failed to protect the interests of the client in three matters; asserted a frivolous claim in two matters; failed to expedite litigation in two matters; made a false statement of material fact or law to a tribunal in two matters; knowingly made a false statement of material fact to disciplinary authorities in four matters; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in five matters; and engaged in conduct prejudicial to the administration of justice in four matters; in aggravation, we considered the widespread and persistent nature of the attorney's misconduct, which, among other things, resulted in two of his clients serving prison terms); In re Cataline, 223 N.J. 269 (2015) (default; two-year suspension imposed on attorney who exhibited gross neglect in three matters, failed to cooperate with the district ethics committee in all four matters, and ignored the client's request for the return of his original documents in one matter; in aggravation, the attorney engaged in a pattern of neglect and abandoned the four clients by closing her office without notice to the clients or attorney regulatory authorities, and by failing to maintain an office telephone; prior reprimand); In re Franklin, 236 N.J. 453 (2019)

(retroactive three-year suspension imposed on attorney who abandoned an unknown number of clients and engaged in an improper fee-sharing arrangement with a company marketed as a service provider to handle and defend foreclosure and real estate mitigation against Florida mortgage lenders); and In the Matter of Thomas J. Whitney, DRB 19-296 (May 12, 2020) (we determined to impose a two-year suspension for abandonment of five matters involving six clients; discipline amplified by respondent's default upon federal and state disciplinary proceedings), ordered as modified, In re Whitney, 248 N.J. 569 (2020) (the Court imposed disbarment, citing respondent's unexcused failure to comply with its disciplinary Order to Show Cause).

Accordingly, we determine that a three-month term of suspension is warranted solely for respondent's abandonment of Jakubiec. We further view the remainder of her misconduct in the Jakubiec matter to be sufficiently addressed by that threshold quantum of discipline. Respondent, however, committed additional, unrelated misconduct.

Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g. In re Fell, 219 N.J. 425 (2014) (reprimand for attorney who was ineligible for five months, but

represented a matrimonial client despite awareness of his ineligibility; an aggravating factor was the attorney's prior reprimand; mitigating factors included the attorney's ready admission of his conduct and the service he provided to his community); In re Moskowitz, 215 N.J. 636 (2013) (reprimand for attorney who was ineligible for more than seven months, but practiced law knowing that he was ineligible to do so); In re D'Arienzo, 217 N.J. 151 (2014) (censure imposed where the attorney's failure to ensure that payment was sent to the Fund was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included a 2013 reprimand, also for practicing while ineligible); and In re Macchiaverna, 214 N.J. 517 (2013) (censure for attorney who knowingly practiced law while ineligible and committed recordkeeping violations; aggravating factors included the attorney's prior reprimand for recordkeeping violations that led to the negligent misappropriation of client funds and his failure to appear on the return date of the Court's order to show cause).

When an attorney makes misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date

of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and the client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for pool attorney with the Office of the Public Defender (the OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c)); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority; failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to segregate

disputed funds; failed to comply with the recordkeeping rule; and failed to cooperate with disciplinary authorities); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the “signature” of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Finally, admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district

ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b)); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

As stated above, standing alone, respondent's abandonment of Jakubiec warrants a three-month suspension. When we consider the remainder of her misconduct, we determine to increase that term of suspension to six months.

In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors. In mitigation, respondent has no prior final discipline. However, in light of her administrative ineligibility since 2016, her unblemished record lasted for only seven years, from her admission in 2009 to her ineligibility to practice in 2016. Thus, we accord that mitigation minimal weight.

In aggravation, we consider the default status of this matter. “[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 further aggravation, respondent caused Jakubiec significant economic harm. Jakubiec was forced to hire another attorney to seek the recovery of the estate funds. Thus, we determine to consider the demonstrable harm to Jakubiec as an aggravating factor. See, e.g., In the Matter of Angela Jupin, DRB 20-178 (April 27, 2021) (we considered significant economic harm to client as aggravating factor in recommending respondent’s disbarment), dismissed as moot, \_\_\_ N.J. \_\_\_ (September 28, 2021); In re Saunders, 248 N.J. 272 (2021) (three-month suspension; default case; we considered significant harm caused to the client and respondent’s repeated failures to cooperate with disciplinary authorities as aggravating factors warranting enhanced discipline in recommending a censure).

We determine, based on the aggregate misconduct as well as the significant aggravating factors, to impose a one-year suspension.

Jakubiec paid respondent a \$3,000 retainer, which respondent did not return, despite her failure to perform any work on his case. We, thus,




determine to further order respondent to disgorge that entire fee to Jakubiec within sixty days of the Court's issuance of a disciplinary Order in this matter.

Member Joseph voted to impose a six-month suspension, with the above condition.

Member Boyer was absent.

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 Michele S. Austin  
Docket No. DRB 21-191

Decided: February 25, 2022

Disposition: One-Year Suspension

<i>Members</i>	One-Year Suspension	Six-Month Suspension	Absent
Gallipoli	X		
Singer	X		
Boyer			X
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1



Johanna Barba Jones  
Chief Counsel