

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-009
District Docket No. IV-2020-0013E

In the Matter of
Cheryl L. Cooper
An Attorney at Law

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Decision

Argued: March 17, 2022

Decided: July 8, 2022

A. Victoria Shilton appeared on behalf of the District IV Ethics Committee

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the District IV Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to communicate with a client); RPC 1.16(d) (failing to protect a

client's interests upon termination of representation); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey bar in 1995 and to the Pennsylvania bar in 2013. She is a sole practitioner in Sewell, New Jersey and has no disciplinary history.

On October 15, 2018, Mary Bozzelli entered into a contract to sell real estate to a buyer. Weichert Realtors held the buyer's \$3,000 earnest money deposit in escrow. During the pendency of the contract, the buyer obtained a home inspection, which revealed several defects, including unclear permit statuses for prior work performed; cracks in the basement walls; open pipes; shoddy electric work; and leaky windows, among other claimed defects. Accordingly, on November 19, 2018, Bozzelli and the buyer, through their respective real estate agents, negotiated an addendum to the contract, which provided that Bozzelli would contribute \$1,400 toward the buyer's closing costs in order to assist with the outstanding problems with the property. Bozzelli also agreed to provide, no later than November 26, 2018, receipts for the property's pool permit and inspection, new interior gas piping, and new furnace and air

conditioner installation. Subject to those conditions, the transaction was scheduled to proceed to closing on November 30, 2018.

However, on November 26, 2018, the buyer alleged that Bozzelli had not complied with her obligations pursuant to the addendum to the real estate contract and sought to void the contract and recoup the deposit. Bozzelli did not agree with the buyer's position and, instead, on November 29, 2018, she retained respondent to pursue specific performance of the transaction. That same date, respondent sent the buyer's real estate agent a letter demanding that the transaction proceed to closing by November 30, 2018. Respondent asserted that there was no basis for the buyer to cancel the real estate transaction because Bozzelli had either repaired the enumerated defects or had made sufficient concessions on others. Respondent further claimed that the buyer's failure to close the transaction on November 30, 2018 would constitute a breach of the real estate contract and that, thereafter, Bozzelli would exercise any legal remedies available to her.

The evening of November 30, 2018, the buyer's real estate agent replied to respondent's letter, asserting that there was a new problem with the property that originated subsequent to the home inspection – water intruding into the basement – and that the buyer was not in a financial position to purchase the home with that defect. The agent also claimed that Bozzelli had not provided

any of the required permits documenting the home repairs she had completed. Accordingly, the agent provided respondent with a Release of Escrow Agreement for Bozzelli to sign.

Thereafter, on December 4, 2018, the buyer retained Gary H. Lomanno, Esq., to represent him in connection with the real estate transaction. Lomanno asserted that Bozzelli had neither completed the repairs she had agreed to complete nor provided required documentation for the repairs she had completed prior to the buyer's home inspection. Thus, Lomanno requested that Bozzelli sign the Release of Escrow Agreement so that the matter could conclude without litigation.

On December 13, 2018, respondent replied to Lomanno and asserted that the real estate contract remained binding. Respondent stated that Bozzelli would not execute the Release of Escrow Agreement and that she would pursue legal remedies if the closing did not proceed on or before December 25, 2018.

Five days later, the buyer filed a pro se breach of contract complaint in the Superior Court of New Jersey, Camden County, Special Civil Part. On January 14, 2019, the buyer moved to transfer venue of the action to the Superior Court of New Jersey, Gloucester County. The buyer served neither respondent nor Bozzelli with the complaint.

However, on January 15, 2019, respondent filed a letter with the Gloucester County Court, requesting to participate by telephone in any argument that was needed on the buyer's motion to transfer venue. Respondent also enclosed a copy of a motion to dismiss the complaint that she claimed she "previously attempted to file." On January 22, 2019, the Honorable Deborah Silverman Katz, A.J.S.C., granted the buyer's motion to transfer venue but did not address respondent's motion to dismiss.

On February 21, 2019, the Honorable Timothy W. Chell, P.J.Cv., entered a default judgment against Bozzelli after she failed to appear for a scheduled bench trial. Consequently, on March 14, 2019, respondent filed a notice of motion to vacate the default and to file an answer and counterclaim out of time. In her certification, respondent explained that she previously had filed a motion to dismiss the buyer's claim because it had been filed in the wrong venue. Additionally, respondent alleged that she had never received a copy of Judge Katz's order transferring venue.¹ Respondent asserted that, because she did not

¹ Even assuming respondent did not receive a copy of Judge Katz's order transferring venue, respondent was the attorney of record for Bozzelli in the eCourts system in both the Camden County and Gloucester County matters. According to the eCourts Attorney User Guide, Special Civil Part, which was prepared by the New Jersey Judiciary, if a filing in the eCourts system has an envelope icon, the notification would have been electronically sent to the e-mail addresses associated with the various parties to a case. Respondent's e-mail address was associated with the matter, and as such, on January 25, 2019, Judge Chell's notice scheduling the bench trial was e-mailed to respondent. The eCourts system reflects that, on the same date, the scheduling notice also was sent to respondent's office address. <https://www.njcourts.gov/attorneys/assets/ecourts/dcattorneyuserguide.pdf>

receive a copy of the January 22, 2019 order, she did not enter a notice of appearance in the Gloucester County matter. Respondent also contended that she did not file an answer to the buyer's complaint because she did not receive a copy of the January 22, 2019 order transferring venue, notwithstanding her January 15, 2019 letter to the court advising of her telephonic availability. Therefore, respondent contended that, because of the buyer's procedural errors in the case, she was seeking to vacate the default judgment. Respondent also sought to transfer the matter from the Special Civil Part to the Law Division because the claimed damages Bozzelli incurred as a result of the buyer's actions exceeded the \$15,000 limit of the Special Civil Division.

On March 29, 2019, the Honorable Samuel J. Ragonese, J.S.C., granted respondent's unopposed motion and entered an order both vacating the default against Bozzelli and permitting her to file an answer and counterclaim out of time. In determining to grant respondent's motion, Judge Ragonese found that respondent's moving papers demonstrated that the buyer obtained the default judgment without have effectuated proper service. Judge Ragonese also ordered that, once Bozzelli filed her answer and counterclaim, the matter would be transferred to the Law Division.

Thereafter, on April 11, 2019, respondent filed an answer and counterclaim on Bozzelli's behalf. Respondent alleged that Bozzelli and the

buyer had a binding real estate contract; that the buyer refused to close on the property despite Bozzelli meeting all of her obligations under the contract; and that, “as a direct and proximate result of [the buyer’s] breach of contract, Counterclaimant has suffered damages.” On May 9, 2019, Lomanno filed an answer to Bozzelli’s counterclaim on behalf of the buyer denying all of the allegations therein.

Thereafter, by letter dated September 20, 2019, Lomanno provided respondent with a discovery request for the production of documents pertaining to Bozzelli’s real estate transaction with the buyer. Two months later, because he had not received any of the requested documents from respondent, Lomanno sent respondent another letter requesting discovery. Lomanno further warned respondent that, if he did not receive the requested discovery within ten days, he would file a motion with the court pursuant to R. 1:6-2(c).²

On October 31, 2019, respondent sent Bozzelli a text message stating that “Its [sic] been crazy since I was away [on my honeymoon]. Nothing is happening

² R. 1:6-2(c) provides that “every motion in a civil case or a case in the Chancery Division, Family Part, not governed by paragraph (b), involving any aspect of pretrial discovery or the calendar, shall be listed for disposition only if accompanied by a certification stating that the attorney for the moving party has [. . .] (2) advised the attorney for the opposing party by letter, after the default has occurred, that continued non-compliance with a discovery obligation will result in an appropriate motion being made without further attempt to resolve the matter [. . .].”

yet. Just turned over your receipts etc. Hopefully next week I can sit down and chat. Dont [sic] be afraid to text me. I cant [sic] always respond right away.”

On November 18, 2019, Bozzelli sent respondent a text message stating “[n]ow that his attorney has my receipts, any reply from them? What’s the next step?” Respondent did not reply. On December 2, 2019, Bozzelli sent respondent another text message stating “Hi...Anything yet?” Again, respondent did not reply.

On December 6, 2019, Bozzelli sent respondent a text message stating “Cheryl, I have texted and emailed you and haven’t heard back. Even over the summer- no update. Our last communication was his attorney received my receipts. I am requesting written correspondence outlining status where we are? In the summer the courts gave ample time for us to respond.” Respondent replied later that day with a text message that stated “The firm Capaldi, Reynolds & pelosi [sic]” which she followed with “Sorry. . . wrong person.” Respondent did not reply to the substance of Bozzelli’s inquiry. Bozzelli continued to send respondent text messages in December 2019 and in January 2020 requesting an update on her case. Respondent did not reply.

On January 13, 2020, because respondent had not replied to his discovery request, Lomanno filed a motion to strike Bozzelli’s answer and counterclaim. Lomanno also requested that the buyer be permitted to proceed by default

because, despite his two discovery requests, respondent had failed to provide any of the requested documents.

On January 27, 2020, Bozzelli sent respondent yet another text message requesting an update because she had not received an update on her case “since last spring.” Respondent replied to inform Bozzelli that “[t]here is nothing really to update yet [. . .] I’ve been so so sick this whole month...sorry for the delay in responding.” Bozzelli expressed her confusion to respondent because she anticipated that the buyer’s attorney would send interrogatories at the beginning of summer 2019. Bozzelli stated that she did not understand how nothing had occurred on her case. Respondent informed Bozzelli that “[i]t is better that you call me.. [sic] there is a whole process in court as far as discovery and then after discovery there are motions etc.”

In reply, Bozzelli sent a text message to respondent and informed her that she had called the court and learned that respondent and Lomanno were scheduled to appear in court on February 14, 2020. Bozzelli told respondent that she would “await [her] call, February 14, to be filled in on the outcome of your conversation [in court].” Respondent replied “Ok.”

On 8:30 a.m. on February 14, 2020, Bozzelli sent respondent a text message, inquiring what time the court conference was scheduled for that day.

Respondent replied, “Mary I have been ill and I don’t know.” Respondent then informed Bozzelli that she was going to have her assistant contact the court.

Also on February 14, 2020, having received no response to Lomanno’s motion, Judge Ragonese issued an order striking Bozzelli’s answer and counterclaim entering default against Bozzelli. Approximately one week later, Lomanno filed a request that the court enter a final judgment of default against Bozzelli because her answer had been stricken. Additionally, Lomanno requested that the court schedule a proof hearing in the default.

On February 11, 2020, respondent’s therapist, Richard Sockriter, MS, MBA, LPC, LCADC, CAADC, ACS, wrote a letter on respondent’s behalf “[t]o the Honorable Judges.” In the letter, Sockriter recounted that he was treating respondent for anxiety, major depression, and Post-Traumatic Stress Disorder (PTSD). Sockriter stated that, despite taking medication and engaging in therapy, “personal issues” that respondent had been facing “came to a head in early January 2020,” and that she had “suffered a relapse.” Sockriter wrote that he had previously recommended that respondent take a leave of absence from her employment but she had been unable to do so. However, due to her relapse, Sockriter recommended that respondent “needs at least 90 days to focus on her health.” Notwithstanding his recommendation for a three-month break,

Sockriter wrote that respondent was not mentally incompetent, and that her PTSD interfered with her ability to focus on things outside of her employment.³

On March 11, 2020, the court entered an order denying a request that respondent be relieved as Bozzelli's counsel and ordered that Bozzelli receive direct notice regarding court proceedings, in addition to respondent's receipt of notice. Respondent denied that she filed a formal motion to be relieved as counsel. Instead, respondent asserted that she had sent the court a letter requesting a stay of the proceedings. The same day, the court scheduled the matter to proceed as a proof hearing.

On March 13, 2020, Bozzelli filed an ethics grievance against respondent. By letter dated March 27, 2020, the DEC secretary informed Bozzelli that he declined to docket her grievance because the underlying litigation had not yet been resolved and respondent was still the attorney of record on the case.⁴

³ On May 28, 2020, Sockriter wrote a follow-up letter in which he stated he continued to treat respondent and that he believed she needed to remain out of work for an additional ninety days. By letter dated September 9, 2020, Sockriter explained that he believed "within a reasonable degree of certainty" that respondent was unable to return to litigation. He believed that respondent was capable of "handling 'in-house' counsel type work, including but not limited to contract negotiations, bankruptcies, labor negotiations, family matters, regulatory matters and other areas of law that do not require the tensions and arguments required in litigation." Sockriter believed that the stress and tension inherent to litigation would trigger respondent's mental health issues.

⁴ See generally, R. 1:20-3(f).

Also on March 27, 2020, respondent sent an e-mail to the DEC secretary to update him on the matter. Respondent explained that she “FINALLY was able to log on to the ecourts...again with great difficulty.” Respondent contended that what should have been a routine motion was not, that the court had “created several issues that have to be addressed,” and that she worked on the matter that day and the prior day.

Later the same date, respondent sent Bozzelli an e-mail – in reply to her October 28, 2019 request for an update – stating that she had sent her a text message with some questions that she needed answered “to get [her] case back on track and in the correct posture to be heard before the court.” Respondent provided Bozzelli with a list of seven action items.

Twenty minutes later, respondent sent an e-mail to the DEC secretary explaining that she had contacted Bozzelli “several times” that day to obtain documents in the case and she had not heard back from Bozzelli. Respondent wrote “[i]t may be necessary for someone to inform her that I ned [sic] her cooperation to help her and to fix the Court’s dismissal.” Respondent stated that it was “most unfortunate that the Court did not follow the Court rules” in the case.

Ninety minutes later, Bozzelli replied to respondent's e-mail, stating that she had filed an ethics grievance against her and requesting that respondent cease contact.

On March 31, 2020, respondent signed a substitution of attorney in the matter and sent it to Bozzelli's new counsel, informing him that "procedurally, this case is in a mess. The Court has not followed the rules and neither has Mr. Loman [sic]." Bozzelli's new counsel then requested a copy of the file, and respondent stated she would provide him, via e-mail, the documents she had. However, respondent did not provide the entirety of the file to Bozzelli's new counsel. Indeed, respondent stated that Bozzelli had never given her needed documents and that respondent did not have access to the entire file. Respondent claimed that she had sent Bozzelli a detailed e-mail regarding the documents she needed to provide, but that Bozzelli did not comply.⁵

On April 21, 2020, the DEC investigator sent respondent a letter, by e-mail, requesting that respondent provide within ten days a written reply to Bozzelli's allegations and all documents associated with the case. By letter dated May 1, 2020, respondent requested an additional three days to submit a reply.

⁵ Prior to Bozzelli filing an ethics grievance in March 2020, respondent had not requested any documents from her in order to reply to Lomanno's request for discovery. To the contrary, the record reflects that Bozzelli repeatedly asked for information regarding the case and respondent told her nothing was happening.

Respondent asserted that she had been residing in Florida since February 16, 2020 and did not have Bozzelli's full file with her. However, respondent maintained that she had "enough of the file" to provide a "coherent written response."

On May 18, 2020, respondent sent her reply to the ethics grievance, explaining that, after the real estate closing did not go forward, she discussed with Bozzelli filing suit for damages. Respondent claimed that it took Bozzelli "a while" to decide whether she wanted to litigate the matter. While Bozzelli was considering her legal options, the buyer filed a complaint against her seeking a refund of the earnest money deposit that Bozzelli's realtor held in escrow.

Respondent asserted that, after the litigation was transferred to Gloucester County, "the procedural errors began," because she never received a new docket number and was not provided with any legal filings. Respondent claimed after she learned the court had entered a default against Bozzelli she was "forced to file a motion to vacate the default judgment."

Regarding the allegations that she failed to communicate with Bozzelli, respondent claimed that her client had her mobile telephone number and could contact her via text message or telephone call. Respondent maintained that,

although she had not gone through every text message she exchanged with Bozzelli, she “responded to all messages from Ms. Bozzelli.”

Respondent denied that she had abandoned her law office but conceded that she had not returned to New Jersey since February 16, 2020, due to the COVID pandemic. Respondent also disputed that she sought to be relieved as counsel for Bozzelli. Instead, respondent claimed that she wrote a letter to Judge Ragonese seeking a stay of the matter due to her mental health. According to respondent, Judge Ragonese treated the letter seeking a stay⁶ as a motion to withdraw as counsel and, rather than grant her request, he struck Bozzelli’s answer and counterclaim for failing to provide discovery.

On July 2, 2020, just over two months after the ethics investigation began, the DEC filed a formal ethics complaint against respondent.

Subsequently, by way of the stipulation in this case, respondent stipulated that she violated RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) in connection with her representation of Bozzelli. Respondent disputed that her conduct violated RPC 3.4(c) because she asserted that she had not abandoned her law practice.

⁶ Respondent testified that she sent the letter to Judge Ragonese via facsimile, because she could not figure out how to submit it as a confidential filing on eCourts. Respondent did not produce the letter during the ethics hearing and it does not appear on the eCourts docket.

During the ethics hearing, Bozzelli testified that, during respondent's representation, she traveled to respondent's office in an effort to speak with her, because respondent was not returning her telephone calls. Furthermore, Bozzelli testified that, when she called respondent's office, although there was a live person answering the phones at the beginning of the representation, in November 2019, thereafter, when she called respondent's office, her calls went to voicemail and she was unable to leave a message because the voice mailbox always was full.

Bozzelli stated that, after retaining new counsel, she was unable to provide him with the file because she did not have the documents. Bozzelli ultimately agreed to a settlement whereby the buyer's \$3,000 deposit was returned. However, Bozzelli testified that she only agreed to settle the matter because she felt she had no choice due to the two default judgments that already had been entered against her.

The DEC investigator also testified at the ethics hearing. He testified that, in respondent's communications to him, she did not reference her therapist's recommendation for a ninety-day mental health break. Respondent also never provided him with the letters her therapist wrote in support of his recommendation.

Moreover, the investigator testified that, until the COVID pandemic began, it was his practice to go to a respondent's office to examine files. However, after the COVID pandemic began, in other matters, he received boxes of documents from attorneys so that he could examine them. However, respondent did not provide the investigator with Bozzelli's complete file; nor did she ask any other trusted individuals to retrieve the file from her office in New Jersey so that she could provide the requested documents to the DEC.

Five other witnesses testified on respondent's behalf. Felix Gonzalez, Esq., a New Jersey attorney, testified that he has known respondent since April 2001, when she began working for him at the Camden City Attorney's Office. Gonzalez testified that respondent is a very caring and smart individual and he trusts her "implicitly." To wit, Gonzalez retained respondent to represent him in each of his two divorces.

Gonzalez also testified that, because he has known respondent for so long, he was struck by how her divorce negatively impacted her. Gonzalez stated that he had never seen respondent in that state, and that he was concerned about her mental health. However, once respondent met and married her current husband, he observed that her mental health seemed to improve. Finally, Gonzalez testified that, although he did not possess a key to respondent's office, he knew how to get in and would help retrieve mail for her.

Jill Woods also testified on respondent's behalf. She testified that respondent was her supervising attorney when she worked as a paralegal at the Camden City Attorney's Office. When respondent opened her own practice, Woods also did per diem paralegal work for respondent. Woods testified that it was "heart wrenching" to see how respondent's foreclosure affected her mental health because, after losing her home, respondent had nowhere to go.

Woods testified that she had a key to respondent's office and, had respondent asked her to, she would have been able to retrieve case files for respondent while respondent was in Florida.

Jill Tina Gentile also testified on respondent's behalf. Respondent employed Gentile as a legal assistant after she represented Gentile in a 2013 divorce. However, Gentile currently owned a flower shop in the same strip mall where respondent's office is located.

Gentile testified that respondent is very smart; that her clients love her; and that she was always at the office working on cases. However, when Gentile saw respondent in late 2019 and early 2020, she observed that respondent looked like she was under the weather all of the time. However, Gentile did not think respondent was so ill that respondent would be unable to work.

Gentile testified that, after respondent moved to Florida, she asked Gentile to check her office mail. Gentile and respondent's son, in addition to Gonzalez,

were part of a system whereby they would retrieve respondent's mail, take pictures of the envelopes to send to respondent, and, if instructed to do so by respondent, would open the mail to scan the documents to respondent's e-mail address. Gentile recalled that, on at least one emergent occasion, respondent asked her to go to her office to put something in there.

Additionally, Gentile had a key to respondent's office and, in fact, around holidays, would utilize some of the office space to store floral arrangements that needed to be delivered.

Sockriter also testified on respondent's behalf. Sockriter was qualified as an expert in the field of "being a licensed professional counselor, in the area of addressing a patient's ability to return to work and whether they should be working in the first place." When asked to the degree of certainty he was offering his opinion, Sockriter was initially unable to answer the question, but later testified that he offered his opinion with a "100 percent" degree of certainty.

With respect to what Sockriter does as a licensed counselor, he testified that he did "pretty much everything that a psychologist is allowed to do, we're just [...] at a level that's different than [a] psychologist. My training is basically the same, but a psychologist would have – I just do not have my doctorate."

Sockriter began treating respondent in June 2019 and had continued telehealth treatment through the date of his testimony. Respondent sought therapy from Sockriter to address PTSD, anxiety, and depression. Sockriter testified that respondent received her mental health diagnoses from her treating physician, but that he agreed with the diagnoses. Sockriter also testified that respondent's physician prescribed her psychotropic medication to assist with her depression, but he did not know what type of medication it was.

Sockriter testified that one of respondent's mental health triggers was helping her adult daughter, who was attending medical school, to figure out direction in life. Another of respondent's triggers was maintaining her law practice, especially when the litigation was "intense."

Regarding her treatment, Sockriter did not meet with respondent for treatment during January 2020; saw her weekly during February 2020; did not meet with respondent for treatment during March or April 2020; and resumed weekly sessions during May 2020. He nonetheless wrote three letters, beginning on February 11, 2020, recommending that respondent suspend her practice for six months to support her mental health.

Eventually, Sockriter believed that respondent's mental health had been addressed to the point where she could return to work, but only if she was not engaging in work that produced a lot of tension. Thus, he believed that

respondent could engage in labor negotiations and the practice of family or bankruptcy law because he did not believe those types of cases would trigger another mental health crisis. Even though he testified that respondent's divorce and related financial issues required a six-month, mental health, leave of absence, Sockriter did not explain why he believed that respondent, whose treatment was not consistent during the height of her mental health crises, would relapse in the future.

At the ethics hearing, respondent testified that her current caseload was "next to none" and that her present practice of law in New Jersey is limited to her review of documents for the Pennsylvania company by which she is employed.

Respondent explained that, at the time Lomanno served his request for production of documents in Bozzelli's case, she was working on a "couple of cases in federal court" that required her attention.⁷ The federal cases had briefs and expert reports due, so she was "primarily focused on [those cases]." In fact, respondent testified that, in January 2020, at the conclusion of her humanitarian trip to Cuba, instead of flying home to New Jersey, she flew to Florida to do depositions of her federal client's experts, who were located in Florida.

⁷ According to a search of the Federal Pacer system, respondent was the attorney of record in five federal matters during the relevant time period.

However, once she returned from Cuba, respondent, who has a history of pneumonia and bronchitis, could not stop coughing and was prescribed three courses of steroids; two or three courses of antibiotics; and a nebulizer to address her cough. Respondent testified that she felt “physically drained” from the medications, but she continued trying to work. Around the same time, she returned to her home after a day at the office and saw a notice to vacate her home due to the foreclosure. Respondent testified that, even though she knew her mortgage had not been paid, that her property was in foreclosure, and that she had consulted with an attorney regarding the foreclosure, the notice to vacate her property came “out of nowhere.” After receiving the notice to vacate her home, respondent testified her life was a “whirlwind” and her mental health suffered.

Respondent acknowledged that she could not substantiate the letter she sent to Judge Ragonese to request a stay of Bozzelli’s case but testified that she did not move to be relieved as counsel. Respondent claimed that she used the same letter in each of her cases, supported by the February 11, 2020 letter from Sockriter, and that in all cases except for Bozzelli’s, she obtained a stay of the proceedings.⁸

⁸ Despite respondent’s articulated mental health struggles while representing Bozzelli, she did not withdraw from the representation as RPC 1.16(a)(2) requires (a lawyer shall withdraw
(footnote cont’d on next page)

Respondent testified that she believed, based upon her experience as a former DEC member, that the DEC investigator would have held the investigation until she was medically released.⁹ Nevertheless, respondent testified that, as a former DEC member, she knew how important it was to reply to an investigator's requests for information.

Respondent testified that Bozzelli's file was approximately 777 pages in volume, but that she provided Bozzelli's new attorney only 150 pages of the file after he requested a copy. Respondent denied that she intentionally refused to provide Bozzelli the file after her request.

In her summation to the hearing panel, the presenter argued that, for almost six months, respondent continuously failed to communicate with Bozzelli and, when she did communicate with her client, she provided false information about the status of the case.¹⁰ The presenter also argued that Bozzelli relied upon respondent's false representations that the case was

from the representation if the lawyer's physical or mental condition materially impairs her ability to represent the client). To the contrary, throughout the ethics proceeding, respondent contended that she was not mentally incompetent and that she did not move to withdraw as Bozzelli's counsel. Respondent believed that the court improperly treated her request for a stay as a motion to withdraw as counsel.

⁹ Respondent did not move for transfer to disability inactive status at any point in her practice. R. 1:20-12.

¹⁰ We note that the DEC did not charge respondent with a violation of RPC 8.4(c).

proceeding apace, and ultimately suffered financial losses of the fee she paid to respondent, the fee she paid for new counsel, and the \$3,000 settlement she ultimately agreed to enter.¹¹

The presenter contended that, although respondent took responsibility for her misconduct, the manner in which she did so – by offering multiple excuses for her misconduct, and blaming her failures on the court’s technology and her health – demonstrated that she was not truly remorseful. Furthermore, the presenter maintained that respondent’s work on the “all consuming” federal cases was one of the reasons respondent ignored Bozzelli’s case and, thus, the RPC violations were not excusable.

Additionally, the presenter argued that, although respondent suffered from mental health issues, her divorce had been finalized in 2016, and the foreclosure of her home, while unfortunate, was inevitable and something she was aware would occur. The presenter further argued that respondent had failed to establish a nexus between her mental health diagnoses and her ability to function as an attorney, and thus, respondent had failed to satisfy the Jacob standard (a demonstration by competent medical proofs that the attorney “suffered a loss of competency or will of a magnitude that could excuse egregious misconduct that

¹¹ The \$3,000 settlement represented the release of the buyer’s funds that were held in escrow.

was clearly knowing, volitional and purposeful”). In re Jacob, 95 N.J. 132 (1984).¹²

In her summation to the hearing panel, respondent argued that no more than an admonition was warranted for her misconduct. Respondent maintained she was truly remorseful for her misconduct; engaged in community service; had a great reputation among her colleagues; and had an unblemished disciplinary record. Respondent also asserted that her mental health significantly contributed to her misconduct.

Respondent further argued that she did not abandon Bozzelli and, instead, sought a stay of the proceedings so that she could address her own mental health. When that attempt failed, and Bozzelli retained new counsel, respondent claimed to have provided Bozzelli’s new attorney with all of the documents he needed to reinstate Bozzelli’s pleading. Furthermore, respondent emphasized that she continued to assist Bozzelli even after Bozzelli had filed an ethics grievance against her.

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent had violated RPC 1.3; RPC 1.4(b);

¹² Respondent did not expressly argue that Jacob applied to her case, and, to the contrary, presented evidence that she was not mentally incompetent. However, we note that, toward mitigation, a respondent may still establish a nexus by which they afflicted by a mental illness.

RPC 1.16(d); and RPC 8.1(b). The DEC dismissed the charge that respondent had violated RPC 3.4(c).

The DEC found that, beginning in the fall of 2019, Bozzelli made several attempts to contact respondent, but received “little substantive response.” The DEC also found that, beginning around that same time period, whenever Bozzelli would call respondent’s office, she was unable to leave a message, because respondent’s voicemail always was full.

Additionally, the DEC found that, although the investigator was willing to travel to respondent’s office to examine the Bozzelli file, even during the COVID pandemic, respondent never offered that as an option, despite the system she had implemented to ensure individuals had access to her office and mail. Respondent communicated with the investigator exclusively in writing.

Although the DEC accepted Sockriter as an expert, it concluded that “it is of some concern to the panel that Mr. Sockriter was unable to indicate what standard he was using to provide his opinion testimony,” but noted he eventually testified that he was one-hundred percent certain of his opinions. Moreover, the DEC found it “odd” that Sockriter believed that respondent could practice as a labor dispute or family law attorney, even though he understood these areas of the law to be “quite argumentative and heated.” The DEC observed that it had “serious misgivings about Respondent’s ability to practice law going forward,

particularly in view of Mr. Sockriter’s opinions and our belief that the few areas he carved out in which Respondent could practice are themselves triggers.”

The DEC found that, although respondent implemented procedures by which her office and files were accessible to individuals in New Jersey, she did not inform the DEC investigator of these arrangements. Therefore, the DEC concluded that “had the events unfolded during ordinary times, the Hearing Panel would have little trouble concluding that Respondent violated [RPC 3.4(c)]. But the events did not unfold during ordinary times.” The DEC stated that it could not ignore the many ways the COVID pandemic impacted “life in general and the practice of law in particular,” especially at the beginning of the COVID pandemic, in spring 2020. The DEC concluded that respondent’s ethics investigation began approximately at the same time the COVID pandemic began, and the investigation was “relatively brief,” and may have warranted more flexibility under the relaxed, but not eliminated, Court Rules.

Nevertheless, in mitigation, the DEC found that respondent suffered emotional and physical problems that made her practice of law difficult during the first few months of 2020. Furthermore, the DEC concluded that respondent had no disciplinary history, engaged in community service, and her misconduct involved a single client matter.

However, the DEC also concluded that Bozzelli suffered financial harm because she was forced to hire another attorney due to respondent's inaction on her case. Additionally, if respondent was incapacitated to the extent described by Sockriter in his three letters, the DEC determined that respondent had an obligation to advise Bozzelli to seek other counsel.

Finally, the DEC believed that respondent had not demonstrated true remorse for her misconduct and instead, attempted to exploit her marital, financial, and mental health issues as an excuse for her actions.

Thus, after placing "great weight on the fact that Respondent knew how to run her practice from a distance but apparently made no effort to convey that knowledge" to Bozzelli, the DEC recommended that respondent be reprimanded.

Neither the presenter nor respondent provided a brief for our consideration.

At oral argument before us, the presenter reiterated the arguments made in her summation to the DEC. She stressed that respondent wished to use the system of trusted individuals who could access her office as proof she did not abandon her law office; yet, she failed to utilize that system when she failed to cooperate with ethics authorities.

The presenter emphasized that respondent ignored Bozzelli's requests for

information on her case, and then replied with false information the few times she did provide information to Bozzelli. The presenter further asserted that respondent consciously decided to devote her energy to her federal cases, rather than Bozzelli's real estate matter, which caused Bozzelli several years of added stress and anxiety.

Therefore, the presenter argued that a reprimand was the appropriate quantum of discipline for respondent's misconduct.

In turn, respondent asserted that she had admitted to the misconduct surrounding Bozzelli's case, while denying that she had abandoned her New Jersey law office.

Respondent claimed to have attempted to rectify the problems with Bozzelli, after the court entered default against Bozzelli, and after Bozzelli filed an ethics grievance against her. However, respondent denied that her misconduct was intentional; rather, it came at a time when she was physically ill, was forced to leave her home, and was suffering from acute mental health distress.

Respondent asserted that she no longer plans to practice law in New Jersey because she resides in Florida. Therefore, respondent argued that the overwhelming mitigating factors weighed in favor of the imposition of an admonition, rather than a reprimand, for her admitted misconduct.

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

Specifically, respondent violated RPC 1.3 by failing to provide requested discovery in Bozzelli's case; failing to file a reply to Lomanno's motion to strike Bozzelli's answer for failure to provide discovery; and failing to take any action to vacate the second default entered against her client. Respondent also failed to file a timely answer to the buyer's pro se complaint against Bozzelli, which required respondent to eventually file a motion to vacate the default.

Likewise, respondent unquestionably violated RPC 1.4(b) by repeatedly failing to reply to Bozzelli's questions regarding her case. Beginning in October 2019, Bozzelli sent multiple text messages to respondent seeking information about her case. Respondent ignored her, and when she did reply, she falsely told Bozzelli that nothing was occurring in the case, even though she knew that her adversary had filed a motion to strike Bozzelli's answer for failure to provide discovery.

The text message exchanges between respondent and Bozzelli also reflect that respondent did not seek any information from Bozzelli in order to reply to Lomanno's request for production of discovery. Rather, although respondent acknowledged receiving the two requests from Lomanno in September and

November 2019, she took no action to obtain the requested information from her client until after Bozzelli filed an ethics grievance against her, in March 2020, after Lomanno already had requested that the court enter default against Bozzelli for failing to provide discovery. Only then did respondent assert that Bozzelli had refused to produce the documents, when, in fact, the record reflects that respondent failed to even notify Bozzelli that the buyer demanded the documents, despite Bozzelli's multiple attempts to communicate with her.

Furthermore, respondent violated RPC 1.16(d) by refusing to comply with Bozzelli's request to provide her with her file. Respondent admitted that she did not provide the entire file to Bozzelli or to Bozzelli's subsequent counsel. Respondent also attempted to downplay her misconduct by alleging that she provided Bozzelli's subsequent counsel with the portion of the file she had with her in Florida and that he merely requested she "send what she had." However, the record unquestionably reflects that both Bozzelli and her subsequent counsel requested the file, and when respondent refused, they moved forward with the litigation with the material respondent produced. Respondent's refusal to produce the entirety of Bozzelli's file is especially striking given that she purportedly had a "system" in place by which multiple individuals routinely accessed her office to deliver mail and scan documents. Respondent's puzzling refusal to request that one of these individuals retrieve Bozzelli's file is

inexcusable, especially because her refusal to produce the file carried into the ethics investigation. Although much was made about how the COVID pandemic impacted respondent's ability to practice law, the record reflects that respondent had a system to overcome any obstacle posed by the pandemic, and that she effectively used the system for other purposes.

Similarly, respondent clearly violated RPC 8.1(b) by repeatedly refusing to produce information requested by ethics authorities, such as Bozzelli's file and the letter she purportedly sent to Judge Ragonese requesting a stay of the litigation.

Conversely, we adopt the DEC's rationale and dismiss the alleged violation of RPC 3.4(c). Although R. 1:21-1(a)(1) requires an attorney to maintain a fixed location where client files may be inspected, on short notice, by ethics authorities, the record does not establish that respondent violated RPC 3.4(c) by residing in Florida and maintaining an unstaffed law office in New Jersey. Unquestionably, respondent's failure to cooperate with the ethics investigation by refusing to provide requested documents violated RPC 8.1(b). However, under the plain language of the Rule, she maintained, and continues to maintain, a fixed physical location in New Jersey for the practice of law where she maintains client files, receives mail and hand deliveries, and where process may be served.

Moreover, the DEC investigator was assigned to the case on April 21, 2020, which was approximately one month after Governor Murphy issued multiple executive orders intended to address the unabated spread of the coronavirus. The investigator concluded his investigation, without ever having spoken to respondent on the telephone or via video call, and without having requested entry to her office; he then filed the ethics complaint on July 2, 2020.

Given those facts, we are unable to conclude by clear and convincing evidence that respondent violated RPC 3.4(c). Further, respondent's failure to provide for examination files in her New Jersey office is adequately addressed by our finding that respondent violated RPC 8.1(b).

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b). We determine to dismiss the RPC 3.4(c) charge. The sole issue remaining for determination is the appropriate quantum of discipline for respondent's misconduct.

Attorneys with no disciplinary history who violate RPC 1.3, RPC 1.4(b), and RPC 1.16(d), even when accompanied by other, non-serious ethics infractions, receive admonitions. See, e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint to be administratively dismissed, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation);

In re Cameron, 192 N.J. 396 (2007) (attorney twice permitted a personal injury matter to be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); In the Matter of Vera E. Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel).

Similarly, 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 failed to 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)); 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)).

Here, the DEC panel recommended a reprimand for respondent's misconduct, assigning great weight to the fact that respondent knew how to operate her law practice from a distance, but made no effort to convey that information to Bozzelli. The DEC also weighed the economic harm Bozzelli suffered as a result of respondent's misconduct.

In further aggravation, respondent is a former member of a District Ethics Committee and acknowledged she knew the importance of cooperating with an ethics investigation. Yet, she admittedly failed to fully cooperate with the DEC's investigation into her own misconduct.

Additionally, Bozzelli suffered some financial harm when constrained to retain new counsel to represent her in her real estate matter. We decline, however, to find any further financial harm in the other, more speculative theories suggested by the presenter, including Bozzelli's inability to access the buyer's funds held in escrow, the cost of relisting the property, or the difference in value between this contract and the ultimate sale.

In mitigation, respondent has twenty-seven years at the bar with no ethics infractions. She also engages in community service by assisting with her

family's charity in Cuba and has an otherwise good reputation among her colleagues.

We ascribe no weight to respondent's mental health diagnoses as either a defense or mitigation. Respondent failed to establish that she suffered such a loss of competency that she was unaware of her conduct, especially in light of her continued work on her "all consuming" federal cases. The Court restated the Jacob standard as follows:

The Jacob standard may not be a model of clarity, but the point to Jacob is that it expressed the Court's willingness to consider defenses that would negate the mental state to act purposely. A mental illness that impairs the mind and deprives the attorney of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong, will serve as a defense to attorney misconduct. The aforesaid defenses are ones that can and should be considered in connection with excusing wrongful conduct by an attorney, or when mitigation of the disciplinary penalty is appropriate to consider under our disciplinary jurisprudence addressing the quantum of punishment.

[In re Cozzarelli, 225 N.J. at 31-32.]

Clearly, in this case, respondent did not satisfy the Jacob standard.

Moreover, respondent failed to clearly establish any nexus between her mental health diagnoses and her misconduct in Bozzelli's case. Although establishing such a nexus would not operate as a complete defense, it would serve to establish mitigation consistently recognized by us and the Court.

Specifically, respondent began therapy in June 2019 and she continued to work not only on Bozzelli's case, but her large federal cases, to which she assigned priority. Indeed, instead of working on Bozzelli's real estate matter, respondent devoted her attention to her federal clients, causing the crux of her misconduct. Moreover, default had already been entered against Bozzelli when respondent suffered her mental health relapse.

Furthermore, Sockriter did not recommend that respondent take a ninety-day break to address her mental health until February 11, 2020, just over one month before Bozzelli filed her ethics grievance. Finally, Sockriter took great care to establish that respondent's mental health struggles did not render her mentally incompetent, despite ultimately recommending a six-month break from legal work. Thus, we find that respondent cannot establish that her mental health struggles were linked to or excused any aspect of her misconduct in Bozzelli's case.


Therefore, considering the totality of respondent's misconduct, and after balancing respondent's ethics violations and conduct during the disciplinary process against the strong mitigation present in this case, including respondent's nearly three decades with no disciplinary infractions, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct, and so respectfully recommend to the Court.

Vice-Chair Singer voted to impose an admonition.

Member Campelo 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 Cheryl L. Cooper
Docket No. DRB 22-009

Argued: March 17, 2022

Decided: July 8, 2022

Disposition: Reprimand

<i>Members</i>	Reprimand	Admonition	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