

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-045
District Docket No. VIII-2023-0002E

In the Matter of Savanna Arabi-Katbi
An Attorney at Law

Decided
August 19, 2024

Certification of the Record

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Introduction

This matter was before us on a certification of the record filed by the District VIII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). 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 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).¹

For the reasons set forth below, we determine that a censure is the appropriate quantum of discipline for respondent’s misconduct.

Ethics History

Respondent earned admission to the New Jersey bar in 2017. During the relevant timeframe, she maintained a practice of law in Edison, New Jersey. She has no prior discipline.

¹ Due to respondent’s failure to file an answer to the formal ethics complaint, and on notice to her, the DEC amended the complaint to include the additional RPC 8.1(b) charge and the RPC 8.4(d) charge.

Service of Process

Service of process was proper.

On September 6, 2023, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. According to the United States Postal Service (the USPS) tracking system, the certified mail was returned to the DEC, marked "RETURNED TO SENDER – UNCLAIMED." The regular mail was not returned to the DEC.

Four months later, on January 4, 2024, the DEC sent a second letter, by certified and regular mail, to respondent's home address of record, informing her that, unless she filed an 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 willful violations of RPC 8.1(b) and RPC 8.4(d). The certified mail was delivered and the regular mail was not returned to the DEC.²

On January 23, 2024, the DEC sent an e-mail to respondent's e-mail address of record, inquiring whether she intended to file an answer to the complaint. Respondent failed to reply to the e-mail.

² The certification of the record indicated that the certified mail was not delivered. However, according to the publicly accessible USPS tracking system, on January 6, 2024, the certified mail was successfully delivered to respondent's address.

As of February 5, 2024, 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 April 1, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to her home address of record, with another copy sent via electronic mail, to her e-mail address of record, informing her that this matter was scheduled before us on May 24, 2024, and that any motion to vacate the default must be filed by April 22, 2024. On April 5, 2024, the certified mail was delivered to an individual at respondent's home address. The regular mail was not returned to the Office of Board Counsel (the OBC). The e-mail was returned as undeliverable.

Finally, on April 1, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on May 24, 2024. The notice informed respondent that, unless she filed a successful motion to vacate the default by April 22, 2024, her prior failure to answer would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

Facts

We now turn to the allegations of the complaint.

On March 15, 2021, Michael Puschak retained respondent to represent him in connection with the appeal of a \$96,230 civil judgment that had been entered against him. Puschak paid respondent \$5,000 toward the representation. On April 7, 2021, respondent filed a timely notice of appeal on behalf of Puschak, in the Superior Court of New Jersey, Appellate Division. Thereafter, in furtherance of the representation, she filed a brief and appendix on Puschak's behalf.

On three occasions, between August 9 and September 9, 2021, the Clerk of the Appellate Division notified respondent, in writing, that the brief and accompanying appendix she had filed were deficient and directed her to cure the deficiencies to avoid the dismissal of Puschak's appeal.³ Respondent failed to cure the deficiencies; consequently, on September 17, 2021, the Appellate Division dismissed the appeal.

Respondent had no substantive communications with Puschak after filing the notice of appeal. Further, she failed to notify Puschak that his appeal had been dismissed. Consequently, Puschak was precluded from seeking relief from

³ The Clerk of the Appellate Division sent deficiency notices to respondent on August 9, August 18, and September 9, 2021.

the civil judgment entered against him. Ultimately, because the judgment was not satisfied, an order was entered permitting the sale of Puschak's property and a sheriff's sale ensued.⁴

According to his grievance, Puschak repeatedly attempted to reach respondent by telephone and e-mail, to no avail.⁵ By the summer of 2022, having received no reply, Puschak became so concerned for respondent's well-being that he contacted the police to perform a wellness check. According to Puschak, respondent eventually contacted him and apologized for her failure to communicate, claiming she had been ill.

On December 9, 2022, Puschak sent a letter to respondent, seeking her malpractice insurance information and notifying her that, in the event she did not reply, he intended to "file an ethics complaint" against her.

On January 27, 2023, Puschak filed an ethics grievance against respondent. Respondent then failed to respond to the DEC investigator's

⁴ According to publicly available records on eCourts, an order permitting the sale of the property was entered on June 22, 2022.

⁵ The grievance and its attachments were included as exhibit D to the certification of the record.

requests for information or to respond to “the [g]rievance in any manner whatsoever.”⁶

Based on the foregoing, the formal ethics complaint charged respondent with having violated RPC 1.3 by failing to diligently represent Puschak,⁷ and RPC 1.4(b) and (c) by failing to communicate with Puschak regarding the status of the case or to respond to his reasonable requests for information. Further, although the complaint did not set forth the investigator’s specific efforts to contact respondent and secure his cooperation with the investigation, respondent was charged with having violated RPC 8.1(b) by failing to submit a written reply to the grievance. Moreover, the complaint was amended to add a second violation of RPC 8.1(b), as well as a violation of RPC 8.4(d), based on respondent’s failure to file a verified answer to the complaint.

⁶ According to the OAE’s database, the ethics grievance was docketed on February 8, 2023. The record does not indicate, however, the date on which the grievance was forwarded to respondent for her reply. The record also does not indicate the dates on which the DEC investigator attempted to contact respondent, or the mode of communication.

⁷ Count one of the ethics complaint included the allegation that respondent “acted with gross negligence” in representing Puschak. However, she was not charged with having violated RPC 1.1(a) (engaging in gross neglect).

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our review of the record, we determine that the facts set forth in the formal ethics complaint support all but one of the charged RPC violations by clear and convincing evidence. 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).

The record before us clearly and convincingly establishes that respondent violated RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness in their representation of a client. Specifically, Puschak retained respondent to file an appeal seeking relief from the \$96,230 judgment entered against him in a civil matter. Although she filed the notice of appeal, plus an accompanying brief and appendix, the filing was deficient. Despite being notified by the Clerk of the Appellate Division, on three separate occasions, that the appeal was at risk of being dismissed due to the deficiencies, respondent failed to cure the filing and, consequently, the appeal was dismissed in September 2021. She then failed to take any further action in connection with her representation of Puschak.

Making matters worse, respondent failed to inform Puschak that the appeal had been dismissed, ignored his repeated attempts to contact her and,

ultimately, ceased all communication with him, in violation of RPC 1.4(b), which requires a lawyer to “keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

Respondent also violated RPC 1.4(c), which obligates an attorney to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. By failing to immediately inform Puschak that the appeal was deficient and, subsequently, dismissed, respondent hindered Puschak’s ability to retain new counsel and extinguished his ability to appeal the judgment on the merits.

RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Respondent violated this Rule in two respects. First, respondent wholly failed to cooperate with the DEC’s investigation and, subsequently, failed to file a verified answer to the complaint.

By contrast, however, we determine to dismiss the RPC 8.4(d) charge, which was added contemporaneously with the RPC 8.1(b) charge, with both charges stemming from respondent’s failure to answer the formal ethics complaint. Although failing to file an answer to a complaint constitutes a well-settled violation of RPC 8.1(b), it is not per se grounds for an RPC 8.4(d) violation. See In re Ashley, 122 N.J. 52, 55 n.2 (1991) (following the attorney’s failure to answer the formal ethics complaint and cooperate with the

investigator, the DEC charged her with violating RPC 8.4(d); the Court expressly adopted our finding that, “[a]lthough the committee cited RPC 8.4(d) for failure to file an answer to the complaint, RPC 8.4(d) deals with prejudice to the administration of justice. RPC 8.1(b) is the correct rule for failure to cooperate with disciplinary authorities.”). Moreover, we consistently have dismissed RPC 8.4(d) charges that are based solely upon an attorney’s failure to file an answer to the complaint. See In the Matter of Richard Donnell Robinson, DRB 23-032 (July 5, 2023) at 12-13, and In the Matter of John Anthony Feloney, IV, DRB 22-179 (March 23, 2023) at 9-10. Consequently, consistent with disciplinary precedent, we determine to dismiss the RPC 8.4(d) charge, as a matter of law.

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 8.1(b) (two instances). We determine to dismiss the RPC 8.4(d) charge. The sole issue left for our determination is the appropriate quantum of discipline for respondent’s misconduct.

Quantum of Discipline

Generally, in default matters where the attorney has no disciplinary history, a reprimand is imposed for lack of diligence, failure to communicate with clients, and failure to cooperate with disciplinary authorities, even if such

conduct is accompanied by similar ethics infractions. See In re Robinson, 253 N.J. 328 (2023) (the attorney failed to appear at scheduled hearings in connection with two client matters; in one client matter, the attorney also failed to file an appeal for which he specifically had been retained; in the second client matter, the attorney failed to file required documents in a bankruptcy matter and failed to explain to the client the alternatives of pleading guilty in connection with her separate municipal court matter; the attorney also failed to file a reply to the first client's grievance and allowed both matters to proceed as a default; no disciplinary history), and In re Vena, 227 N.J. 390 (2017) (the attorney unilaterally settled the client's tax appeals, thereby depriving the client of the ability to make informed decisions regarding the representation; thereafter, for nearly three months, the attorney ignored his client's multiple requests for information and failed to cooperate with disciplinary authorities; the attorney also violated RPC 1.16(a) (failing to withdraw from representation on discharge by a client), RPC 3.3(a) (making a false statement of material fact or law to a tribunal), and RPC 8.4(c); no disciplinary history).

The quantum of discipline is enhanced, however, when additional aggravating factors are present. See In re Witherspoon, 249 N.J. 537 (2022) (censure for an attorney, in a default matter, who took little or no action to settle his client's brother's estate; the attorney also failed to reply to the client's

repeated inquiries regarding the status of her matter, prompting the client to retain new counsel to protect her interests; although the attorney had no prior discipline, we determined that an enhanced sanction was warranted based on the harm to the client, both in delay and the financial expenses, because the client was forced to hire another lawyer to settle the estate), and In re Levasseur, ___ N.J. ___ (2022), 2022 N.J. LEXIS 457 (three-month suspension for an attorney, in a default matter, who failed to timely prosecute his client’s lawsuit concerning an insurance dispute arising out of damage to her home caused by Super Storm Sandy; the attorney’s failure to prosecute the litigation resulted in the dismissal of the client’s claim and the likely loss of the client’s potential avenues for relief; the attorney intentionally failed to advise his client of the dismissal of her matter and failed to attempt to reinstate the litigation; the attorney also repeatedly ignored the client’s numerous requests for information regarding her matter; the attorney had a 2020 reprimand for similar misconduct and, thus, had a heightened awareness of his obligation to cooperate with disciplinary authorities; nevertheless, the attorney neither submitted a written reply to the grievance nor filed an answer to the complaint).

Here, respondent’s misconduct is akin to that of the attorneys in Witherspoon and Levasseur who, in default matters, received a censure and a three-month suspension, respectively. Like those attorneys, respondent took

little action to pursue her client's appeal. Consequently, respondent's failure to take any action in furtherance of the representation deprived her client of the ability to challenge the merits of the civil judgment entered against him and, ultimately, caused him significant financial harm. Respondent also failed to reply to her client's repeated inquiries concerning the status of his matter. Moreover, like the attorney in Levasseur, respondent failed to advise her client of the dismissal of his matter, thereby precluding him from seeking any form of redress in response to the dismissal of his appeal. However, respondent lacks the aggravating factor that contributed to the term of suspension imposed in Levasseur – two prior reprimands, both in default matters.

In our view, based on the foregoing precedent, the baseline discipline for respondent's misconduct is a censure. To craft the appropriate discipline, however, we also consider mitigating and aggravating factors.

In mitigation, respondent has no prior discipline in her six years at the bar.

In aggravation, respondent failed to file an answer to the complaint and allowed this matter to proceed as a default. Ordinarily, we would consider respondent's default as a sufficient aggravating factor to permit the baseline discipline to be further enhanced. In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). However, as detailed above, respondent's default was considered in setting a censure as the baseline discipline and, therefore, we will

not enhance the discipline based on Kivler. Likewise, we factored the significant harm respondent's misconduct caused her client into the baseline discipline and, accordingly, do not enhance the discipline on that basis.

Conclusion

On balance, consistent with disciplinary precedent, we conclude that a censure is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

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. Mary Catherine Cuff, A.J.S.C. (Ret.),
Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Savanna Arabi-Katbi
Docket Nos. DRB 24-045

Decided: August 19, 2024

Disposition: Censure

<i>Members</i>	Censure	Absent
Cuff	X	
Boyer	X	
Campelo		X
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel