

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-255
District Docket No. XIV-2011-0656E

IN THE MATTER OF
KEVIN H. MAIN
AN ATTORNEY AT LAW

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Decision

Decided: December 19, 2013

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for his failure to file an affidavit in compliance with R. 1:20-20. For the reasons expressed below, we determine that a concurrent one-year suspension is warranted.

Respondent was admitted to the New Jersey bar in 1988. He has been suspended from the practice of law since June 11, 2011.

On April 30, 2010, respondent received an admonition for failure to cooperate with an ethics investigation. In the Matter of Kevin H. Main, DRB 10-046 (April 30, 2010).

On June 11, 2011, respondent was suspended for three months for misconduct in four consolidated default matters. Specifically, he was found guilty of gross neglect in two matters; lack of diligence in two matters; misrepresentation in one matter; failure to deliver funds to a client in one matter; and failure to communicate with clients and to cooperate with ethics authorities in all four matters. In re Main, 206 N.J. 66 (2011). The Court ordered that, prior to reinstatement, respondent provide proof of fitness to practice, and upon reinstatement, that he practice law under the supervision of a practicing attorney for a two-year period.

In another default matter, respondent received an additional, consecutive three-month suspension, effective September 12, 2011, for misconduct in one client matter. There, he failed to file a complaint, causing the statute of limitations to expire. He also failed to reply to his client's numerous attempts to contact him. Respondent was guilty of gross neglect, lack of diligence, pattern of neglect, failure to communicate with the client, failure to promptly turn over the client's file, and failure to cooperate with the ethics

investigation in the matter. In re Main, 208 N.J. (2011). The Court ordered the same conditions previously imposed: prior to reinstatement, proof of fitness to practice and, upon reinstatement, supervision by a proctor for two years.

On June 8, 2012, in a third default matter, the Court imposed a two-year suspension, effective immediately, for respondent's conduct in six matters. He was found guilty of gross neglect and lack of diligence in five matters; failure to communicate with clients and failure to cooperate with disciplinary authorities in all of the matters; misrepresentation in two matters; failure to turn over a file in one matter; and pattern of neglect. The Court imposed the same conditions previously imposed in respondent's earlier matters. In re Main, 210 N.J. 256 (2012).

On April 25, 2013, respondent was suspended for an additional two years for misconduct in another default, involving six client matters. In re Main, 213 N.J. 491 (2013). Respondent failed to communicate with clients and failed to cooperate with disciplinary authorities in all six matters, lacked diligence in three matters, grossly neglected one matter, failed to withdraw from the representation when his mental condition impaired his ability to represent the client in one matter, and exhibited a pattern of neglect.

Service of process was proper in this matter. On September 26, 2012, the OAE sent copies of the complaint, by regular and certified mail, to respondent's last known home address, his office address at 20 Nassau Street, Suite 26B, Princeton, New Jersey 08542, and an additional address listed in the attorney registration records: Post Office Box 550, Princeton, New Jersey 08542.

The certified mail receipt for the mail sent to the home address was returned, showing that it was delivered. The signature of the recipient was illegible. The regular mail was returned with the hand-written notation "MOVED."

The certified mail sent to the Nassau Street, Princeton address was marked "Forward Time Exp Rtn to Send." The return label that the post office had placed on the returned mail listed the Princeton post office box as respondent's address. The regular mail that had been sent to that Princeton address was also returned with the same post office label affixed to it.

The certified mail sent to the Princeton post office box was returned marked "unclaimed," with a hand-written notation "P.O. Box Closed/Non Payment." The regular mail sent to that address was also returned.

On October 17, 2012, the OAE sent an address information request to the Postmaster for verification of respondent's

address. On December 10, 2012, the OAE received a reply that respondent had moved and had not left a forwarding address.

On December 17, 2012, notice of the complaint was made by publication in Mercer County in The Times and in the New Jersey Law Journal.

As of the date of the certification of the record, July 18, 2013, respondent had not filed an answer to the ethics complaint.

According to the complaint, the Court suspended respondent from the practice of law for three months, effective June 11, 2011. He was subsequently suspended for three months and again for two years.¹ In sum, respondent has been suspended on four occasions and has not sought reinstatement. He remains suspended to date. The New Jersey Lawyers' Fund for Client Protection records show that, prior to his suspension, respondent maintained a law office at 20 Nassau Street, Suite 2B, Princeton, a business mailing address at Post Office Box 550, in Princeton, and a home address in Mercer County, New Jersey.

Pursuant to the Court's orders of suspension, respondent was required to comply with R. 1:20-20, which provides that a suspended attorney, among other things, "shall within 30 days

¹ The complaint did not include respondent's 2013 suspension.

after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Respondent failed to file the affidavit.

By letter dated January 18, 2012, sent to respondent's home and office addresses, by regular and certified mail, the OAE advised him of his responsibility to file the affidavit in accordance with R. 1:20-20. The OAE requested a reply by February 1, 2012. The certified mail receipt for the mail sent to respondent's home was returned, indicating delivery on January 20, 2012. The signature of the recipient was illegible. The regular mail sent to the same address was not returned. The certified mail receipt for the mail sent to respondent's office and post office box were returned with respondent's signature. The regular mail sent to both addresses was not returned.

Respondent neither replied to the OAE's letters nor filed the required affidavit. The complaint, thus, alleged that respondent willfully violated the Court's orders, and failed to take the steps required of all suspended or disbarred attorneys, thereby violating RPC 8.1(b) and RPC 8.4(d).

According to an OAE memorandum dated July 18, 2013, on September 11, 2012, an OAE investigator went to respondent's Princeton law office and discovered that he did not maintain an office at that location; that his office telephone number rang busy, each time the investigator tried to call him; and that, after driving past his home address, the investigator found no indication that respondent was practicing law on the premises.

The OAE urged us to impose an additional nine-month suspension on respondent, or an additional three-month suspension for each of his failures to file the required affidavit of compliance. The OAE argued that this sanction was required because respondent had shown a pattern of disregard for the ethics system. The OAE pointed to the aggravating factors present here, which, in the OAE's view, require discipline greater than the threshold measure of discipline, a reprimand, under In re Girdler, 179 N.J. 227 (2004). Those factors are: (1) respondent's failure to file the affidavit, after being requested to do so by the OAE; (2) his failure to answer the formal ethics complaint; and (3) his ethics history.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are

true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

R. 1:20-20(b)(15) requires a suspended attorney to file an affidavit of compliance within thirty days of the order of suspension. In the absence of an extension by the Director of the OAE, an attorney's failure to file the R. 1:20-20 affidavit within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). As the OAE noted, the threshold measure of discipline for an attorney's failure to file an R. 1:20-20 affidavit is a reprimand. In re Girdler, supra, 179 N.J. 227; In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Examples of aggravating factors include the attorney's failure to respond to the OAE's specific request that the affidavit be filed, the attorney's failure to answer the complaint, and the existence of a disciplinary history. All three aggravating factors are present in this case.

In Girdler, the attorney received a three-month suspension, in a default matter, for his failure to comply with R. 1:20-20(e)(15). Specifically, after prodding by the OAE, Girdler failed to produce the affidavit of compliance, even though he

had agreed to do so. Girdler's disciplinary history consisted of a reprimand, a private reprimand, and a three-month suspension in a default matter.

Since Girdler, discipline greater than a reprimand has been imposed in the following cases, most of which proceeded as defaults: In re Fox, 210 N.J. 255 (2012) (censure following a temporary suspension); In re Sirkin, 208 N.J. 432 (2011) (censure after the attorney received a three-month suspension); In re Gahles, 205 N.J. 471 (2011) (censure after the attorney had been temporarily suspended and had been prompted by the OAE to file the required affidavit; the attorney had received a reprimand in 1999, an admonition in 2005, and a temporary suspension in 2008 for failure to pay a fee arbitration award, as well as a \$500 sanction; the attorney remained suspended at the time of the default); In re Garcia, 205 N.J. 314 (2011) (three-month suspension for attorney's failure to comply with the OAE's specific request that she file the affidavit; her disciplinary history consisted of a fifteen-month suspension); In re Berkman, 205 N.J. 313 (2011) (three-month suspension where the attorney had a prior nine-month suspension); In re Battaqlia, 182 N.J. 590 (2006) (non-default case; three-month suspension, retroactive to the date that the attorney filed the affidavit of compliance; the attorney's ethics history included

two concurrent three-month suspensions and a temporary suspension); In re Raines, 181 N.J. 537 (2004) (three-month suspension where the matter proceeded by way of stipulation and the attorney's ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order); In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension after a temporary suspension; the attorney ignored the OAE's specific request that he submit the affidavit; the attorney had a disciplinary history consisting of a three-month suspension in a default matter and a six-month suspension); In re Sharma, 203 N.J. 428 (2010) (six-month suspension for attorney whose ethics history included a censure for misconduct in two default matters and a three-month suspension; the attorney failed to comply with the OAE's request that he file the affidavit and repeatedly failed to cooperate with disciplinary authorities); In re LeBlanc, 202 N.J. 129 (2010) (six-month suspension for attorney whose ethics history included a censure, a reprimand, and a three-month suspension; two of the prior disciplinary matters proceeded on a default basis); In re Warqo, 196 N.J. 542 (2009) (one-year suspension where the attorney's ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and

a combined one-year suspension for misconduct in two separate matters; all disciplinary proceedings proceeded on a default basis); In re Wood, 193 N.J. 487 (2008) (one-year suspension following a three-month suspension; the attorney also failed to comply with the OAE's request that he file the R. 1:20-20 affidavit; the attorney's disciplinary history consisted of an admonition, a reprimand, a censure, and a three-month suspension; two of those matters proceeded on a default basis); In re McClure, 182 N.J. 312 (2005) (one-year suspension for attorney whose disciplinary history consisted of a prior admonition and two concurrent six-month suspensions, one of which was a default; the attorney's failure to cooperate with disciplinary authorities included his reneging on a promise to the OAE to complete the affidavit); In re King, 181 N.J. 349 (2004) (one-year suspension for attorney whose ethics history consisted of a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; in two of the matters, the attorney failed to cooperate with disciplinary authorities and ignored the OAE's attempts to have her file an affidavit of compliance; the attorney remained suspended since 1998, the date of her temporary suspension); and In re Brekus, 208 N.J. 341 (2011) (two-year suspension imposed on attorney

whose ethics history included an admonition, a reprimand, a one-year suspension, a censure, and another one-year suspension, also by default).

We agree with the OAE that more than a reprimand, the threshold measure of discipline, is warranted in this case, which proceeded as a default. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In re Kivler, 193 N.J. 332, 342 (2008).

Earlier this year, we found that respondent's ethics improprieties appeared to have resulted from his mental health problems. It was not a situation where he failed or refused to learn from prior mistakes. In the Matter of Kevin H. Main, DRB 12-252 (February 6, 2013) (slip op. at 22). We determined to impose an additional two-year prospective suspension to give him time to resolve his personal issues and, perhaps, resume the practice of law. (Respondent's more recent suspension will expire on June 2014.)

Here, too, it does not appear that respondent is purposefully ignoring the ethics system, but that he is unable to face his legal and ethics responsibilities. We, therefore, determine that an additional one-year suspension is appropriate,

in light of his ethics history (a 2010 admonition, two three-month suspensions in 2011, a 2012 two-year suspension, and a 2013 two-year suspension; the four latter cases proceeded as defaults). The suspension should be served concurrently with the two-year suspension imposed on April 25, 2013.

We further determine that the same conditions previously imposed should be continued: proof of fitness to practice prior to reinstatement and, on reinstatement, a two-year proctorship.

Member Gallipoli did not participate. Members Singer and Hoberman abstained.

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
Bonnie C. Frost, Chair

By: 
Isabel Frank
Acting Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Kevin H. Main
Docket No. DRB 13-255

Decided: December 19, 2013

Disposition: One-year concurrent suspension

Members	Disbar	One-year suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Clark		x				
Singer					X	
Yamner		X				
Doremus		X				
Gallipoli						X
Hoberman					X	
Zmirich		X				
Total:		6			2	1



Isabel Frank
Acting Chief Counsel