

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-299
District Docket No. XIV-2012-0483E

IN THE MATTER OF :
CHRISTOPHER D. BOYMAN :
AN ATTORNEY AT LAW :
:

Decision

Decided: February 24, 2014

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 (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice), based on his failure to file the required R. 1:20-20 affidavit, following his suspension from the practice of law. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1987. In 2010, he was censured, on a certified record, for misconduct in

two matters. In one matter, he was found guilty of gross neglect, lack of diligence, and failure to communicate with his client. In the other matter, he was found guilty of gross neglect and lack of diligence in connection with two collection matters. He also entered into an improper business transaction with the client and failed to return the client's file. He failed to cooperate with disciplinary authorities in both matters. In re Boyman, 201 N.J. 203 (2010).

In 2012, respondent was temporarily suspended, effective February 6, 2012, for failure to pay the assessed administrative costs in connection with his censure matter. In re Boyman, 209 N.J. 2 (2012). He remains suspended to date.

Service of process was proper in this matter. On June 12, 2013, the OAE forwarded a copy of the complaint, by certified and regular mail, to respondent's home address.¹ The certified mail was returned as unclaimed. The regular mail was not returned.

Respondent did not file an answer.

¹ During the course of the investigation in this matter, the OAE learned that respondent no longer maintains his law office in Cranford, New Jersey.

On July 26, 2013, the OAE sent a letter to respondent's home address, by regular and certified mail, advising him that, unless he filed an answer to the complaint within five days, the allegations would be deemed admitted and the record would be certified to the Board for the imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b). The certified mail was returned, marked "Refused." The regular mail was not returned.

As of the date of the OAE's certification of the record, August 30, 2013, respondent had not filed an answer to the complaint.

As noted previously, respondent was temporarily suspended from the practice of law, effective February 6, 2012. Pursuant to the Court's order, respondent was directed to comply with R. 1:20-20. That rule provides, among other things, that a suspended attorney

shall within 30 days 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.

[C¹.]²

Respondent failed to comply with the mandate of R. 1:20-20.

By letter dated January 14, 2013, the OAE advised respondent of his responsibility to file the R. 1:20-20 affidavit and requested a reply by January 28, 2013. The letter was sent to respondent's home and office addresses, by certified and regular mail. The certified mail to respondent's home address was returned as unclaimed. The regular mail to his home address was not returned. Both the certified and regular mail to respondent's office address were returned, marked "not deliverable as addressed unable to forward." Respondent neither replied to the OAE's letter nor filed the required affidavit.

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)(1).

² C refers to the formal ethics complaint.

As indicated above, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the order of suspension, to "file with the Director [of the OAE] 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."

In the absence of an extension by the Director of the OAE, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15), within the time prescribed, "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c).

The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20 affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004); 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. Ibid. 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. Ibid.

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, the attorney failed to produce the affidavit of compliance with that rule, even though he had agreed to do so. The attorney's disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter.

Since Girdler, discipline greater than a reprimand was imposed in the following cases: In re Terrell, 214 N.J. 44 (2013) (censure imposed on a certified record for failure to file the R. 1:20-20 affidavit); In re Fox, 210 N.J. 255 (2012) (in a default matter, censure imposed on attorney who failed to file the affidavit of compliance following a temporary suspension); In re Saint-Cyr, 210 N.J. 254 (2012) (in a default matter, censure imposed on an attorney who failed to file the R. 1:20-20 affidavit following a temporary suspension); In re Sirkin, 208 N.J. 432 (2011) (in a default matter, censure imposed on attorney who failed to file affidavit of compliance with R. 1:20-20 after he received a three-month suspension); In re Gahles, 205 N.J. 471 (2011) (in a default matter, censure for attorney who failed to comply with R. 1:20-20 after a temporary suspension and then after being prompted by the OAE to do so; 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; she remained suspended at the time of the default); In re Garcia, 205 N.J. 314 (2011) (in a default matter, 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 in a default matter where attorney had a prior nine-month suspension); In re Battaglia, 182 N.J. 590 (2006) (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 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 for attorney who failed to comply with R. 1:20-20 after a temporary suspension; the attorney ignored the OAE's specific request that he submit the affidavit, defaulted in the matter, and had a disciplinary history consisting of a three-month suspension in a default matter and a six-month suspension); In re Wargo, 196

N.J. 542 (2009) (one-year suspension for failure to file the R. 1:20-20 affidavit; 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); and In re Brekus, 208 N.J. 341 (2011) (in a default matter, two-year suspension imposed on attorney with significant ethics history: a 2000 admonition, a 2006 reprimand, a 2009 one-year suspension, a 2009 censure, and a 2010 one-year suspension, also by default).

In this matter, the OAE filed a memorandum suggesting that the appropriate discipline is a censure or a three-month suspension. The OAE noted that respondent failed to file the R. 1:20-20 affidavit after the OAE's request, allowed the matter to proceed as a default, and was previously censured.

The OAE is correct that more than the threshold measure of discipline - a reprimand - is justified. As to the appropriate degree of discipline, In re Terrell, supra, 214 N.J. 44, is instructive. There, the attorney failed to comply with the requirements of R. 1:20-20 and allowed the disciplinary matter to proceed on a default basis. Terrell had been temporarily suspended for failing to satisfy a fee arbitration award and to

pay a \$500 sanction to the Disciplinary Oversight Committee. She had no disciplinary history. Terrell received a censure.

In re Saint-Cyr, supra, 210 N.J. 254, is also instructive. There, too, the suspension that led to the required R. 1:20-20 affidavit stemmed from a temporary suspension for failure to comply with a fee arbitration determination. We took into account that the suspension order was not an order of final discipline and that, therefore, the new matter (the R. 1:20-20 matter) did not reflect that Saint-Cyr was a respondent who had failed to learn from prior disciplinary sanctions. In the Matter of Elaine T. Saint-Cyr, DRB 11-305 (December 22, 2011) (slip op. at 2). Saint-Cyr was censured.

The same reasoning applies here. It is true that, unlike Terrell and Saint-Cyr, respondent has a disciplinary record (censure). But so did the attorney in Gahles, who, like Terrell and Saint-Cyr, received a censure for her failure to file the R. 1:20-20 affidavit, following a temporary suspension and after being prompted by the OAE to do so, like here. Gahles had a worse ethics history than respondent (a reprimand, an admonition, and another temporary suspension). Therefore, we believe that a censure is sufficient discipline in this case as well.

Chair Frost and Vice-Chair Baugh would impose a three-month suspension. Member Gallipoli voted for disbarment, believing that an attorney who disobeys a court order and a court rule, in such circumstances, should be disbarred. Member Doremus did not participate.

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
Isabel Frank
Acting Chief Counsel

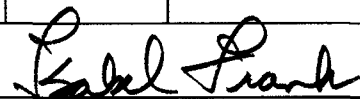
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher D. Boyman
Docket No. DRB 13-299

Decided: February 24, 2014

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark			X			
Doremus						X
Gallipoli	X					
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:	1	2	5			1



Isabel Frank
Acting Chief Counsel