

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-092  
District Docket No. XIV-2014-0221E

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IN THE MATTER OF  
EDWARD G. WERNER  
AN ATTORNEY AT LAW

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Decision

Decided: December 2, 2016

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 the required R. 1:20-20 affidavit, following his temporary suspension from the practice of law. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1989. On April 26, 2013, he was reprimanded in a default matter for failing

to return an unearned \$4,000 retainer. The Supreme Court Order further required respondent to refund the retainer within sixty days. In re Werner, 213 N.J. 498 (2013).

On March 12, 2014, respondent was temporarily suspended for failing to return the retainer in the matter for which he was reprimanded, above. In re Werner, 217 N.J. 127 (2014). Respondent remains suspended to date.

Service of process was proper in this matter. On February 20, 2015, the OAE sent a copy of the complaint to respondent, in accordance with R. 1:20-7(h) at his last known home address in Denver, Colorado, by regular and certified mail.

The certified mail was returned to the OAE marked "Unclaimed." The regular mail was not returned.

On August 4, 2015, the OAE sent a second letter to respondent, at the same address, by both certified and regular mail. The letter informed respondent that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction and that the complaint would be amended to include a charge of RPC 8.1(b) (failure to cooperate).

The certified mail envelope was returned to the OAE marked "Unclaimed." The regular mail envelope was not returned. The time within which respondent may answer the complaint has expired. As of the date of the certification of the record, respondent had not filed a R. 1:20-20 affidavit or an answer to the ethics complaint.

We now turn to the allegations of the complaint. The Court's March 12, 2014 Order of temporary suspension required respondent to comply with R. 1:20-20, which mandates, among other things, that a suspended attorney file with the Director of the OAE, within thirty days after the date of the order of suspension, "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 do so.

The complaint recited the OAE's additional efforts to notify respondent of his responsibility to file the affidavit. Specifically, on July 3, 2014, the OAE sent respondent a letter, by certified and regular mail, at his last-known home address, last-known office address, an out-of-state address in care of a relative, and an additional out-of-state address, discovered by the OAE, advising respondent of his duty to file the R. 1:20-20 affidavit and requesting a reply by July 17, 2014.

The certified and regular mail envelopes sent to respondent's home address were returned marked "Attempted Not Known."

The certified and regular mail envelopes to respondent's office address were returned marked "Not Deliverable As Addressed Unable to Forward."

The certified mail envelope sent in care of respondent's relative was returned marked "Unclaimed," with a hand-written notation stating "Moved 7/7/14." The regular mail sent to that address was not returned.

The green certified mail return receipt for the envelope sent to respondent at the additional out-of-state address was returned, indicating delivery on July 9, 2014, signed by respondent. The regular mail sent to that address was not returned.

Respondent neither replied to the letter nor filed the R. 1:20-20 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). We decline, however, to find a violation of RPC 8.1(b), based solely on respondent's failure to file an answer to the complaint.

Rule 1:20-4(f)(1) provides that a failure to file a verified answer shall be deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. Nowhere does that Rule provide that such a failure shall also constitute a violation of RPC 8.1(b), such as is the case in other Court Rules. See R. 1:20-20(c) (providing that a failure to comply with that Rule shall also constitute violations of RPC 8.1(b) and RPC 8.4(d)) and R. 1:21-6(i) (providing that a failure to comply with the requirements of the recordkeeping rule or to respond to a request to produce such records shall be deemed a violation of RPC 1.15(d) and RPC 8.1(b)). For these reasons, we dismiss the RPC 8.1(b) violation that was based on respondent's failure to file an answer to the complaint.

Respondent, however, failed to comply with his obligation to file an affidavit of compliance. His failure to do so violated both RPC 8.1(b) and RPC 8.4(d).

The OAE urges us to impose a censure on respondent for his misconduct.

The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). Since Girdler, however, the discipline imposed on attorneys who have failed to comply with R. 1:20-20 and whose disciplinary history consisted

only of a temporary suspension and/or discipline short of a fixed suspension, has been a censure. See, e.g., In re Kinnard, 220 N.J. 488 (2015) (in a default matter, attorney failed to file a R. 1:20-20 affidavit after his temporary suspension for failing to pay the disciplinary costs in an earlier matter; prior admonition); In re Saint-Cyr, 210 N.J. 254 (2012) (in a default matter, attorney failed to file the R. 1:20-20 affidavit after a temporary suspension; no history of final discipline); In re Fox, 210 N.J. 255 (2012) (in a default matter, attorney failed to file the R. 1:20-20 affidavit after a temporary suspension; no history of final discipline); and In re Gahles, 205 N.J. 471 (2011) (in a default matter, attorney did not file the required affidavit following a temporary suspension for failure to comply with a fee arbitration determination; prior reprimand and admonition).

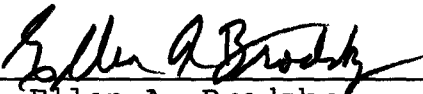
Like Kinnard, Saint-Cyr, Fox, and Gahles, respondent defaulted in his obligation to file an answer to the complaint. Moreover, he ignored the OAE's request for compliance with R. 1:20-20 and has a disciplinary history that includes a prior reprimand and a temporary suspension.

Because respondent has only a prior reprimand and a temporary suspension, we voted to impose a censure, as the OAE has urged.

In a separate, dissenting decision, Member Gallipoli voted for disbarment. Members Hoberman and Rivera 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:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Edward G. Werner  
Docket No. DRB 16-092


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Decided: December 2, 2016

Disposition: Censure

Members	Censure	Disbar	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	6	1	2

  
Ellen A. Brodsky  
Chief Counsel