

Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 18-352 and 18-376
District Docket Nos. XIV-2017-0674 and
XIV-2018-0179E

In the Matter of

Scott Michael Marinelli

An Attorney At Law

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Decision

Decided: May 15, 2019

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

These matters were before us on certifications of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). In the first matter, the formal ethics complaint charged respondent with having violated 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 an affidavit of compliance with R. 1:20-20 following his August 25, 2017 temporary suspension. In the second matter, the formal ethics complaint charged respondent with having violated RPC 8.1(b), based on his failure to

submit to the OAE a written reply to a grievance filed against him by another attorney.

We determine to impose a censure on respondent for the totality of his misconduct.

Respondent was admitted to the New Jersey bar in 2001. At the relevant times, he maintained an office for the practice of law in Chatham.

On August 25, 2017, the Court temporarily suspended respondent for failure to cooperate with the OAE. In re Marinelli, 230 N.J. 341 (2017).

DRB 18-352 (XIV-2017-0674E)

In respect of the first matter, the OAE charged respondent with having violated RPC 8.1(b) and RPC 8.4(d), based on his failure to file an affidavit of compliance with R. 1:20-20 following his August 25, 2017 temporary suspension.

Service of process was proper. On July 16, 2018, the OAE sent a copy of the formal ethics complaint to respondent's last known home address listed in the records of the New Jersey Lawyers' Fund for Client Protection (CPF), by regular and certified mail, return receipt requested. The certified letter was "unclaimed," and, thus, returned to the OAE. The letter sent by regular mail was not returned.

On August 23, 2018, the OAE sent another letter to respondent, at the same address, by regular and certified mail, return receipt requested. The letter informed respondent that, if he failed to file an answer within five days, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The certified letter was "not deliverable as addressed," and, thus, returned to the OAE; however, the tracking information on the United States Postal Service website states that the letter was unclaimed. The letter sent by regular mail was not returned.

As of October 10, 2018, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

According to the single-count ethics complaint, the Court's August 25, 2017 Order temporarily suspending respondent from the practice of law required him to comply with R. 1:20-20, which, in turn, obligated respondent, within thirty days, to file with the OAE Director "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 did not file the affidavit within the required time.

By letter dated January 29, 2018, the OAE informed John McGill, III, Esq., respondent's lawyer in the underlying disciplinary matter, of respondent's obligation to file the affidavit and requested a reply by February 12, 2018. McGill did not timely reply to the letter, and respondent did not file the affidavit.

On May 14, 2018, the OAE informed McGill, by telephone, that respondent's deadline to file the affidavit was May 31, 2018. The next day, pursuant to McGill's request, the OAE sent him an e-mail confirming the May 31, 2018 deadline. The e-mail also suggested that, if the affidavit was not submitted by that date, the OAE would file a formal ethics complaint against respondent.

Respondent did not file the affidavit of compliance with R. 1:20-20 by May 31, 2018 and, to date, has failed to do so. In the absence of an extension by the Director of the OAE, failure to file an affidavit of compliance within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). In addition, respondent has "failed to take the steps required of all suspended or disbarred attorneys," such as notifying clients and adversaries of his suspension and providing his clients with their files. Consequently, the complaint charged respondent with failure to cooperate with disciplinary

authorities, in violation of RPC 8.1(b), and conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. 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). Thus, respondent's failure to file the affidavit is a per se violation of RPC 8.1(b) and RPC 8.4(d).

DRB 18-376 (XIV-2018-0179E)

In respect of the second matter, the OAE charged respondent with having violated RPC 8.1(b), based on his failure to submit a written reply to a grievance filed against him by another attorney.

Service of process was proper. On August 21, 2018, the OAE sent a copy of the formal ethics complaint to respondent's last known home address listed in the CPF's records, by regular and certified mail, return receipt requested. On August 27, 2018, respondent accepted and signed for the certified letter. The letter sent by regular mail was not returned.

On September 17, 2018, the OAE sent another letter to respondent, at the same address, by regular mail. The letter informed respondent that, if he failed

to file an answer within five days, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). Although the certification of the record does not state whether the letter was returned to the OAE, this is of no consequence because (1) respondent had accepted service of the complaint in August and (2) a five-day letter is not required by the Court Rules.

As of October 30, 2018, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

According to the single-count ethics complaint, on March 5, 2018, attorney George Lordi notified the OAE that respondent was engaged in the unauthorized practice of law. On March 29, 2018, the OAE wrote to McGill and requested that respondent submit a written reply to the OAE by April 13, 2008. Respondent did not submit a reply.

On April 17, 2018, McGill sent an e-mail to respondent, with a copy to the OAE, stating that he did not represent respondent "on this new matter" and requested that respondent communicate directly with the OAE. Ten days later, the OAE sent a letter to respondent at his home address, by regular and certified mail, return receipt requested, requesting that he submit a written

reply to the grievance by May 10, 2018. The certified letter was marked "unclaimed – vacation hold," and, thus, returned to the OAE. The letter sent by regular mail was not returned. Respondent did not comply with the OAE's request to provide an answer to Lordi's grievance.

On June 4, 2018, the OAE sent another letter to respondent at his home address, by certified mail, return receipt requested, and regular mail, informing him that the matter had been re-assigned to another OAE attorney and requesting that he submit his written reply to the grievance by June 15, 2018. The certified letter was marked "unclaimed – unable to forward," and, thus, returned to the OAE. The letter sent by regular mail was not returned. Respondent did not comply with the OAE's request.

On an unidentified date, the OAE learned that respondent may have had a secondary home address. On June 14, 2018, the OAE sent a letter to respondent at this secondary home address, by certified mail, return receipt requested, and regular mail, requesting that he submit a written reply to the grievance no later than June 25, 2018. On an unidentified date, respondent accepted and signed for the certified letter.

During a June 18, 2018 telephone conversation with the OAE, respondent acknowledged that he had received the OAE's letters dated March 29, April 27, and June 4, 2018. Respondent also stated that his wife resided at

the secondary address, and that his home address "is still the same." Further, he claimed that he would answer the OAE's letters. He did not.

On June 28, 2018, the OAE sent another letter to respondent at his home address, by certified mail, return receipt requested, and regular mail, requesting that he submit a written reply to the grievance by July 3, 2018. On an unidentified date, respondent accepted and signed for the certified letter. Respondent did not comply with the OAE's request.

On July 25, 2018, the OAE sent another letter to respondent at his home address, by certified mail, return receipt requested, and regular mail, scheduling a demand interview for August 8, 2018. The status of the letter sent by certified mail is unclear, although it appears to have been returned to the OAE. Presumably, the letter sent by regular mail was not returned.

Respondent failed to appear for the demand interview. Consequently, the OAE charged respondent with having violated R. 1:20-3(g)(3) and RPC 8.1(b).

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. 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).

R. 1:20-3(g)(3) requires every attorney to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information. A violation of this Rule constitutes a violation of RPC 8.1(b), which prohibits a lawyer, in connection with a disciplinary matter, from knowingly failing to respond to a lawful demand for information from a disciplinary authority.

Here, respondent violated both the Rule and the RPC, by ignoring the OAE's letters of March 29, April 27, June 4, June 14, June 28, July 3, and July 25, 2018, and by refusing to submit a written reply to the grievance or appear for the August 8, 2018 demand audit. In re Kaigh, 231 N.J. 7 (2017); In the Matter of Jaime Merrick Kaigh, DRB 16-282 (March 31, 2017) (slip op. at 5-6). He also violated RPC 8.1(b), by failing to file an answer to the formal ethics complaint. In re Gonzalez, 230 N.J. 55 (2017).

* * *

There remains for determination the appropriate quantum of discipline to impose on respondent for his violation of RPC 8.1(b) and RPC 8.4(d) in the first matter and for his violation of RPC 8.1(b) in the second matter.

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 answer the complaint, the existence of a disciplinary history, and the attorney's failure to follow through on his or her promise to the OAE that the affidavit would be forthcoming. Ibid.

Since Girdler, censures have been imposed in default cases such as this, in which an attorney's disciplinary history is limited to a temporary suspension. See, e.g., In re Terrell, 214 N.J. 44 (2013) (attorney failed to file a R. 1:20-20 affidavit after she was temporarily suspended for failure to satisfy a fee arbitration award and to pay a \$500 sanction to the Disciplinary Oversight Committee), and In re Saint-Cyr, 210 N.J. 254 (2012) (attorney failed to file a R. 1:20-20 affidavit after she was temporarily suspended for failure to comply with a determination of the District X Fee Arbitration Committee). Like Terrell and Saint-Cyr, respondent has defaulted, but he has no disciplinary history. Thus, in the first matter, a censure would be appropriate for respondent's violation of RPC 8.1(b) and RPC 8.4(d).

Failure to cooperate with an ethics investigation, without more, usually results in an admonition. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to the district ethics

committee investigator's repeated requests for information regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)), and In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the district ethics committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b)).

When an attorney defaults in a matter charging him or her with having failed to cooperate in the investigation of a single matter, the discipline is not automatically enhanced to a reprimand, however. In re Stemmer, No. D-4 September Term 1999 (March 10, 2000). In Stemmer, the Court rejected our imposition of a reprimand on an attorney who had defaulted in a matter charging him with a violation of RPC 8.1(b), based on his failure to reply to the district ethics committee's requests for information about a grievance. According to the Court, "the purposes of discipline can be adequately served in this matter by the issuance of a letter of admonition." See also In re Ventura, 183 N.J. 226 (2005), and In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002).

In the second matter, respondent's failure to cooperate was a single event, albeit on a long continuum, from the investigation stage to the default.

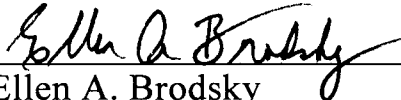
Thus, the appropriate discipline for his violation of RPC 8.1(b) would be an admonition.

We were charged with imposing a single form of discipline for respondent's RPC violations in both matters before us. For the totality of respondent's misconduct, we determine to impose a censure.

Member Gallipoli voted to recommend respondent's disbarment, and authored a separate dissenting decision.

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


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Scott Michael Marinelli
Docket Nos. DRB 18-352 and 18-376

Decided: May 15, 2019

Disposition: Censure

<i>Members</i>	Censure	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman	X			
Joseph	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	8	1	0	0


Ellen A. Brodsky
Chief Counsel