

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-189  
District Docket No. XIV-2018-0297E

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In the Matter of :  
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Michael S. Garofalo :  
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An Attorney at Law :  
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Decision

Decided: January 14, 2020

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 formal ethics complaint charged respondent with having violated RPC 8.1(b) (failing to cooperate with disciplinary authorities) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to suspend respondent for three months.

Respondent was admitted to the New Jersey bar in 1998. At the relevant times, for reasons explained below, he did not maintain an office for the practice of law in New Jersey.

On June 6, 2017, respondent was suspended for six months for knowingly making false statements to disciplinary authorities; committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in all other respects – specifically harassment, in violation of N.J.S.A. 2C:33-4(A); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging, in a professional capacity, in sexual harassment discrimination. In re Garofalo, 229 N.J. 245 (2017). He remains suspended to date.

Service of process was proper. According to the May 20, 2019 certification of the record, in 2018, the OAE sent correspondence regarding the underlying grievance to respondent, at his home address of record. The mailings, however, were returned to the OAE. Moreover, during the OAE investigation, respondent had affirmatively refused to provide disciplinary authorities with his current mailing address.<sup>1</sup> Therefore, on February 14 and

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<sup>1</sup> New Jersey attorneys have an affirmative obligation to inform the New Jersey Lawyers' Fund for Client Protection and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent did not satisfy this obligation.

February 18, 2019, the OAE published notices in The Star-Ledger and New Jersey Law Journal, respectively, that a formal ethics complaint had been filed against respondent.

Moreover, on March 18, 2019, the OAE sent a copy of the formal ethics complaint, by regular and certified mail, to respondent's home address of record. The letter sent by regular mail was returned on March 29, 2019, marked, "Return to Sender, Attempted Not Known, Unable to Forward."

As of May 20, 2019, the certified mail had not been returned to the OAE. However, the United States Postal Service (USPS) tracking system indicated that the certified mailing had been returned to the OAE. Because service had been unsuccessful, the OAE did not send respondent a "five-day letter." Typically, if an attorney fails to file an answer to an ethics complaint, the OAE sends a letter informing the attorney that, unless an answer is filed within five days, the OAE will certify the record to us for the imposition of a sanction.

As of May 20, 2019, 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.

We now turn to the allegations of the complaint.

Prior to respondent's June 6, 2017 suspension, he had been a partner at the law firm of Laddey, Clark, and Ryan LLP, in Sparta, New Jersey.

On May 2, 2018, the Honorable Noah Franzblau, J.S.C., of the Superior Court of New Jersey, Morris/Sussex Vicinage, referred to the OAE a matter wherein respondent was a party. Specifically, Judge Franzblau had presided over respondent's divorce proceedings, in which Ann M. Pompelio, Esq. represented respondent. Pompelio informed the judge that respondent, who lived and worked in Italy at the time, would not authorize her to accept service of a temporary restraining order (TRO) filed against respondent in a separate domestic violence proceeding also before Judge Franzblau.

On May 17, 2018, the OAE initiated an investigation into the events contained in the judge's May 2, 2018 referral. On May 23, 2018, the OAE sent a letter, by regular and certified mail, to respondent's home address of record, informing him of the referral, and requesting his written reply, by June 8, 2018.

The regular and certified mail envelopes were returned to the OAE marked "Forward Time Exp Rtn to Send," with a Wake Forest, North Carolina address.<sup>2</sup> On May 30, 2018, the OAE sent respondent an e-mail, requesting that he provide

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<sup>2</sup> The record is silent about any efforts to serve respondent at the North Carolina address.

his mailing address in Italy. In an e-mail reply, respondent “respectfully decline[d]” to do so.

During a June 13, 2018 telephone interview with the OAE, respondent stated that he would return to the United States on July 11, 2018, and that all correspondence regarding the disciplinary proceedings should be sent to Pompelio, who was representing him in the divorce. The OAE, however, confirmed that Pompelio did not represent respondent in the ethics matter.

When the OAE informed respondent that Judge Franzblau had referred his conduct to the OAE, respondent admitted that he had appeared, by telephone from Italy, before Judge Franzblau for a hearing, but had abruptly terminated that phone call. Respondent also told the OAE that he did not intend to seek reinstatement to the practice of law in New Jersey.

On June 13, 2018, during a second telephone conversation, the OAE informed respondent that, upon his return to the United States, he was required to reply, in writing, to the grievance and to appear for an interview. Although respondent told the OAE that he would be living with his father upon his return, he refused to provide that address.

Also, on June 13, 2018, at respondent’s request, the OAE sent correspondence regarding the grievance to Pompelio, enclosing a copy of the grievance, so that respondent could retrieve it upon his return to the United

States. The correspondence to Pompelio also sought to confirm that she represented respondent in the divorce, but not in the ethics investigation. The OAE's grievance letter to respondent requested his written reply by July 22, 2018. Respondent, however, failed to reply to the grievance.

In a third June 13, 2018 telephone call, respondent again informed the OAE that Pompelio would be representing him in the ethics investigation, and, thus, all communications should be directed to her.

On July 30, 2018, Pompelio denied to the OAE that she represented respondent in the ethics matter. The next day, however, she informed the OAE that she had been retained in the ethics matter, that she accepted service of the grievance in respondent's behalf, and that she would send the OAE a copy of the representation letter after respondent signed a retainer agreement.

On August 1, 2018, the OAE sent Pompelio a letter requesting her written clarification that she represented respondent in the ethics matter. Respondent was copied on the letter, which was sent to him by regular and certified mail, to his home address of record. Both letters were returned by the USPS marked "Forward Time Exp Rtn to Send," and included a Wake Forest, North Carolina address.

On August 6, 2018, Pompelio notified the OAE, in writing, that, despite her earlier representations, respondent ultimately had not retained her as counsel in the ethics matter.

In an August 29, 2018 telephone call with the OAE, when respondent was informed that he must file a written reply to the grievance, he indicated his wish to relinquish his license to practice law in New Jersey. He was told that he could not do so during an ethics investigation. By letter of the same date, the OAE confirmed that conversation and required his written reply to the grievance, by September 14, 2018. The letter further stated that his failure to reply would result in a charge of failure to cooperate with disciplinary authorities.

The August 29, 2018 certified and regular mailings to respondent were returned marked “Forward Time Exp Rtn to Send,” and included a Wake Forest, North Carolina address. Thereafter, in an August 30, 2018 telephone conversation, respondent informed the OAE that: (1) he would not cooperate in its ethics investigation; (2) he had no intention of returning to New Jersey; (3) he would not seek reinstatement of his law license; and (4) “he would not divulge his present location to the OAE or where he intended to live.”

For respondent’s failure to reply to the ethics grievance and for his refusal to provide disciplinary authorities with a current address where he could

be contacted, the ethics complaint charged respondent with a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

In respect of the charge that respondent engaged in conduct prejudicial to the administration of justice, during the April 4, 2018 motion hearing in the divorce action before Judge Franzblau, respondent had appeared by telephone, apparently from Italy. After being sworn as a witness, respondent confirmed his current e-mail address and mailing address in Italy, information the judge required to communicate with him in respect of the domestic violence matter. Pompelio did not represent respondent in the domestic violence matter.

The divorce portion of the hearing addressed a number of important issues, including the disposition of large marital assets. Respondent was an active participant in those proceedings, freely testifying about the matter. However, once that aspect of the hearing concluded, Judge Franzblau asked respondent whether he was aware of an outstanding TRO against him (a reference to the matter that respondent had precluded Pompelio from accepting service on his behalf). When respondent replied in the negative,<sup>3</sup> the judge

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<sup>3</sup> Respondent specifically stated, “I haven’t been served with anything, Your Honor, so, no, I’m not.” The judge replied, “You’re not aware. All right. I am putting you on notice that there is a temporary restraining order that has been taken against you. It’s – actually, there is now a continuance order.”



recited the date that the TRO had been issued and informed respondent that the sheriff had been trying to locate and serve him for nine months.

The judge then told respondent that he would read the contents of the TRO complaint aloud, so that respondent would have notice of it. At that point, the following exchange between Judge Franzblau and respondent took place:

And I'm going to read it to you so you're on notice, because the Court is going to schedule this matter for April 26th. So if you want to retain counsel and be here, I suggest that you do so. If you choose not to be, you are deemed on notice at this point. And I'm going to read the complaint to you, so it may take a few minutes, but you will be expected to be here, because the Court will deem this appropriate service. The Court will also email you at the address that you put on the record. I'm reading you the predicate act. The --

[Respondent:] Well, Your Honor, this is not proper service, with all due respect to the Court. I have never evaded service. I have told Mr. Heimbuch where I was at all times. I am not going to accept service over the telephone.

[The Court:] I am reading you --

[Respondent:] I am an attorney. I know --

[The Court:] I am reading the complaint to you.

[Respondent:] -- what my rights are.

[The Court:] It -- if you --

[Respondent:] Thank you. Goodbye. [Respondent terminates the telephone call].

[C¶¶15-16;Ex.3.]<sup>4</sup>

According to the complaint, the judge had not excused respondent from the hearing when respondent unilaterally and intentionally terminated the telephone call.

The complaint alleged that respondent engaged in conduct prejudicial to the administration of justice, a violation of RPC 8.4(d), when he appeared before a Superior Court judge, and, after being sworn as a witness, purposely terminated that call without leave to do so, while the judge was discussing the matter.

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).

On June 6, 2017, respondent was suspended from the practice of law for six months. During the pendency of his own divorce action in Superior Court, on a date not set forth in the record, respondent traveled to Italy to live and to work.

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<sup>4</sup> "C" refers to the January 30, 2019 formal ethics complaint.

On April 4, 2018, respondent appeared by telephone from Italy for a hearing in his divorce matter. Respondent's divorce attorney, Pompelio, informed the judge that respondent would not authorize her to accept service in respect of a second matter before the judge, a domestic violence matter naming him as the defendant. A TRO had been issued against respondent at the time.

During the proceeding, respondent was sworn as a witness and confirmed with the Court his e-mail and mailing address in Italy for the domestic violence matter. When the judge asked respondent whether he knew that a TRO had been issued against him on May 15, 2017, he indicated that he did not, prompting the judge to attempt to read the TRO complaint aloud, to put respondent on notice of it. The judge explained that he was going to schedule that matter for an April 26, 2018 hearing on final restraints. As he began to read the complaint, respondent objected to service by telephone and abruptly terminated the telephone call, while the judge was in mid-sentence.

Despite respondent's contention that the court could not assert jurisdiction over him to effect service by telephone, respondent was a sworn witness appearing of his own volition in Superior Court at the time. Nevertheless, he interrupted the judge and terminated the telephone call in an attempt to thwart the proceedings. Respondent's conduct is akin to appearing in court in person, being sworn, and then leaving the courtroom when the judge

changed the topic to a second matter. Respondent was not free to pick and choose which aspects of the court's jurisdiction he would accede to that day.

The ease with which a telephone call could be terminated certainly made it more attractive for respondent to interrupt the proceedings than if he had been physically present in Judge Franzblau's courtroom. However, ending the phone call was not respondent's sole option that day. Rather, Pompelio was present in the courtroom at the time, and could have acted in his behalf, if he had permitted her to do so. Undoubtedly, respondent's decision to terminate the telephone call, without leave of court to do so, negatively impacted Judge Franzblau's ability to conduct an unimpeded hearing, and constituted conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

In respect of the failure to cooperate charge, between May 17, 2018 and August 29, 2018, the OAE sent respondent several letters requesting his written reply to the within grievance. During that time, respondent communicated with the OAE by telephone, suggested that Pompelio may represent him for the ethics matter, but ultimately did not retain an attorney for his ethics matter. In an August 30, 2018 telephone communication, respondent indicated to the OAE that he would not cooperate with the ethics investigation.

As of January 30, 2019, the date that the ethics complaint was filed, respondent had not provided the OAE with a written reply to the grievance

underlying this matter. Moreover, he refused the OAE's proper demand for his current address. Thereafter, respondent failed to file an answer to the ethics complaint and permitted the matter to proceed to us as a default, all in violation of RPC 8.1(b).

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. *See, e.g., In re Cerza*, 220 N.J. 215 (2015) (reprimand imposed on an attorney who failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)); *In re D'Arienzo*, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance

notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without

authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

Here, respondent's misconduct most closely resembles that of the attorney in D'Arienzo, who was censured for his misconduct prejudicial to the administration of justice during a municipal court trial. D'Arienzo had a prior three-month suspension and two admonitions. Respondent committed his misconduct in the Superior Court, participating in his divorce proceeding while evading service in a domestic violence matter wherein a TRO had been issued. In further aggravation, respondent has a prior six-month suspension for egregious misconduct. In light of those facts, at least a censure is warranted.

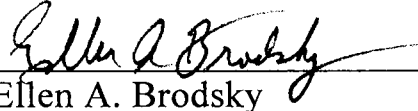
Moreover, respondent committed additional ethics violations by repeatedly refusing to cooperate with ethics authorities. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).

Accordingly, we determine that a three-month suspension is the necessary quantum of discipline to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli voted for disbarment. Members Joseph and Zmirich voted for a six-month suspension. Member Boyer 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  
Bruce W. Clark, Chair

By:   
Ellen A. Brodsky  
Chief Counsel




SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Michael S. Garofalo  
Docket No. DRB 19-189

Decided: January 14, 2020

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Six-Month Suspension	Disbar	Recused	Did Not Participate
Clark	X				
Gallipoli			X		
Boyer					X
Hoberman	X				
Joseph		X			
Petrou	X				
Rivera	X				
Singer	X				
Zmirich		X			
Total:	5	2	1	0	1

  
Ellen A. Brodsky  
Chief Counsel