

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-278
District Docket No. XIV-2008-0447E

IN THE MATTER OF
SAUL A. BERKMAN
AN ATTORNEY AT LAW

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Decision

Decided: December 8, 2010

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 cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE urged us to impose a three month suspension. We agree with the OAE that a three-month suspension is appropriate.

Respondent was admitted to the New Jersey bar in 1974. On July 14, 2008, he received a nine-month suspension in a reciprocal discipline matter originating in the state of New York. There, respondent grossly neglected a case and lied to the client about its status. In re Berkman, 195 N.J. 190 (2008). Respondent remains suspended to date.

Service of process was proper in this matter. On November 2, 2009, the OAE sent a copy of the complaint, by both certified and regular mail, to respondent's last known "home/office address" listed in the records of the Lawyers' Fund for Client Protection (CPF), 465 Monroe Avenue, Washington Township, New Jersey 07676.

The green certified mail card was returned to the OAE indicating delivery on November 5, 2009. The signature of the party accepting the mail is illegible. The regular mail was not returned.

On March 26, 2010, the OAE sent a "five-day letter," to the Monroe Avenue address notifying respondent that, unless he filed an answer within five days, the record would be certified directly to us for the imposition of discipline. The green certified mail card was returned to the OAE indicating delivery

on March 31, 2010. The signature is illegible. The regular mail was not returned.

Respondent did not file an answer to the complaint.

The July 14, 2008 suspension order required respondent to comply with that portion of R. 1:20-20 mandating that a suspended attorney, "within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the [OAE] 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.

On September 23, 2008, the OAE sent a letter to respondent's Monroe Avenue address, by regular and certified mail, advising him of his obligation to file the affidavit by October 7, 2008.

The green certified mail card was returned to the OAE signed by respondent on September 24, 2008. The regular mail to both addresses was not returned.

Respondent did not reply to the OAE or file the affidavit.

On June 23, 2009, OAE personnel visited respondent at his Monroe Avenue address and personally advised him of his failure

to file the affidavit. At that time, the OAE also provided him with copies of the suspension order, R. 1:20-20, and OAE contact information for his submission of the affidavit.

Respondent still did not file the required affidavit.

The complaint alleged that respondent willfully violated the Supreme Court's suspension order by failing to take the steps required of all suspended attorneys, including notifying clients and adversaries of the suspension and providing clients with their files.

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).

R. 1:20-20 requires all suspended attorneys to file an affidavit showing that they have taken all steps required by the rule, such as notifying clients and adversaries of their suspension and returning files to their clients. Respondent failed to do so. He, therefore, is guilty of failure to cooperate with ethics authorities, a violation of RPC 8.1(b), and also conduct prejudicial to the administration of justice, a violation of RPC 8.4(d). R. 1:20-20(c).

The only issue left for our determination is the quantum of discipline. The presumptive discipline for an attorney's failure to file an affidavit in compliance with R. 1:20-20 is a reprimand. 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. Girdler received a three-month suspension in a default matter, where he failed to produce the affidavit after prodding by the OAE and after agreeing to do so. Girdler's disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter. In re Girdler, 179 N.J. 227 (2004).

See also In re Battaglia, 182 N.J. 590 (2006) (three-month suspension made retroactive to the date that the attorney filed the affidavit of compliance; the attorney's ethics record included two concurrent three-month suspensions and a temporary suspension); In re Raines, 181 N.J. 537 (2004) (three-month suspension for attorney whose ethics history included a

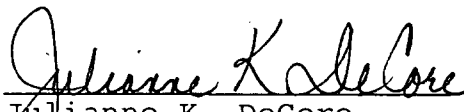
private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order); In re Le Blanc, 202 N.J. 129 (2010) (default; six-month suspension imposed where the attorney had received a censure, a reprimand, and a three-month suspension; two of the prior disciplinary matters proceeded on a default basis); In re Horowitz, 188 N.J. 283 (2006) (default; six-month suspension for attorney whose prior discipline consisted of a three-month suspension and a pending one-year suspension in two default matters; ultimately, the attorney was disbarred on a motion for reciprocal discipline from New York); In re Wood, 193 N.J. 487 (2008) (one-year suspension; attorney failed to file R. 1:20-20 affidavit after a three-month suspension; the attorney also failed to comply with the OAE's request that he do so; the attorney had an extensive disciplinary history: an admonition, a reprimand, a censure, and a three-month suspension; two of those matters proceeded as defaults); and In re McClure, 182 N.J. 312 (2005) (one-year suspension; the attorney's disciplinary history consisted of an admonition and two concurrent six-month suspensions, one of which was a default; the attorney also failed to abide by his

promise to the OAE that he would file the affidavit; need for progressive discipline noted).

Respondent has defaulted in this matter and has a prior nine-month suspension. Attorneys Girdler, Battaglia, and Raines received three-month suspensions with prior discipline similar to that of respondent, Girdler's also occurring within a default. We, thus, determine that a prospective three-month suspension is the appropriate sanction for this respondent.

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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

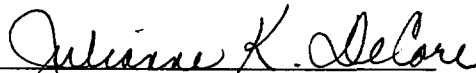
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Saul A. Berkman
Docket No. DRB 10-278

Decided: December 8, 2010

Disposition: Three-month suspension

<i>Members</i>	Disbar	Three-month suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				


Julianne K. DeCore
Chief Counsel