

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-289
District Docket No. XIV-08-0448E

IN THE MATTER OF
DORA R. GARCIA
AN ATTORNEY AT LAW

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Decision

Decided: December 14, 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). 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), following her failure to file a R. 1:20-20 affidavit. We determine to impose a consecutive three-month suspension.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1992. By order dated June 12, 2008, she was suspended

for fifteen months, in a reciprocal discipline matter from Pennsylvania. There, she was found guilty of aiding and abetting her lawyer husband in the practice of law, after he was suspended; practicing law under a false and misleading firm name; lacking candor to a tribunal; filing frivolous lawsuits; and making numerous false and reckless allegations about the qualifications of judges. In re Garcia, 195 N.J. 164 (2008). The suspension was retroactive to November 24, 2007, the date of her suspension in Pennsylvania. She remains suspended.

Respondent has been ineligible to practice law in New Jersey since September 26, 2005 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper in this matter. On November 2, 2009, the OAE sent a copy of the complaint, via certified and regular mail, to respondent's last known home and office addresses listed in the attorney registration records, as well as an additional address discovered during the OAE investigation: 1218 First Avenue, Media, Pennsylvania 19063, 3201 Atlantic Avenue, Atlantic City, New Jersey 19072, and 1315 Bobarn Drive, Penn Valley, Pennsylvania 19072, respectively. The regular mail sent to Media was returned marked "Not

Deliverable as Addressed Unable to Forward." The certified mail sent to this address was returned marked "Unclaimed Unable to Forward." Both the regular and certified mail to Atlantic City were returned marked "Not Deliverable As Addressed Unable to Forward." The certified mail sent to Penn Valley was returned marked "Unclaimed Unable To Forward." The regular mail was not returned.

On March 24, 2010, the OAE sent an address information request to the Postmaster in Penn Valley, Pennsylvania, seeking verification of respondent's address. On April 1, 2010, the OAE received confirmation from the postmaster that mail is delivered to respondent at the Penn Valley address.

On March 25, 2010, the OAE sent a letter to respondent, advising her that, if she did not file an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b). The letter was sent to the Penn Valley address via certified and regular mail. The certified mail was returned marked "Unclaimed Unable to Forward." The regular mail was not returned. Respondent did not file an answer to the complaint.

The Court's June 2008 order suspending respondent required her to comply with R. 1:20-20. Among other things, respondent had to file with the OAE Director a detailed affidavit specifying how she had complied with each of the provisions of the rule and the Supreme Court's order. Respondent did not file the required affidavit.

By letter dated August 31, 2009, the OAE brought to respondent's attention her failure to file the R. 1:20-20 affidavit and directed her to do so immediately. The letter was sent via certified and regular mail to the Media and Penn Valley addresses and to the Atlantic City address. Both the certified and regular mail to the Atlantic City address were returned as undeliverable. The certified mail to the Media address was returned "Unclaimed." The regular mail was not returned. The certified mail return receipt for the Penn Valley address was returned to the OAE indicating delivery on September 3, 2009. The signature is illegible. The regular mail was not returned.

Respondent neither replied to the OAE's letter nor filed the affidavit of compliance with R. 1:20-20.

We find that the facts recited in the complaint support the charges of unethical conduct. We deem respondent's failure to file an answer 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(b)(15) requires a suspended attorney, within thirty days of an 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 OAE Director, 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). Thus, respondent's failure to file the affidavit is a per se violation of RPC 8.1(b) and RPC 8.4(d).

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 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 that ensues, and the

existence of a disciplinary history. Ibid. Girdler received a three-month suspension in a default matter. In re Girdler, 179 N.J. 227 (2004). He failed to produce the affidavit after prodding by the OAE and after agreeing to do so. His disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter.

Other attorneys who received a term of suspension are: In re Battaglia, 182 N.J. 590 (2006) (three-month suspension imposed in a non-default matter; the suspension was 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 Sharma, 203 N.J. 430 (2010) (six-month suspension in a default matter; the attorney's ethics history included a censure for misconduct in two default matters and a three-month suspension; aggravating factors were the attorney's failure to comply with the OAE's request that he file the affidavit, his disciplinary record, and his repeated failure to

cooperate with disciplinary authorities); In re Le Blanc, 202 N.J. 129 (2010) (six-month suspension imposed in a default matter; 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) (on a certified record, a six-month suspension was appropriate for attorney who failed to comply with R. 1:20-20; the attorney's ethics history 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 the 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 on a default basis); 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).

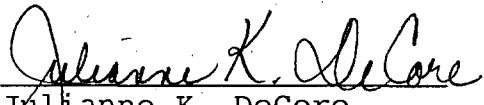
In a memorandum to Board Chief Counsel, dated August 10, 2010, the OAE recognized that a reprimand is the presumptive discipline for an attorney's failure to file the R. 1:20-20 affidavit. The OAE argued that, here, respondent should receive a three-month suspension because of the aggravating factors present. Specifically, the OAE pointed to respondent's disciplinary history and to her failure to answer the complaint.

We agree with the OAE that respondent's conduct warrants more than a reprimand, due to the aggravating factors present in this case. First, she failed to comply with the OAE's specific request that she file the affidavit. Second, she has a disciplinary history consisting of a fifteen-month suspension. Third, she has defaulted in this matter. These factors justify enhancing the discipline to a consecutive three-month suspension.

Vice-Chair Frost 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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

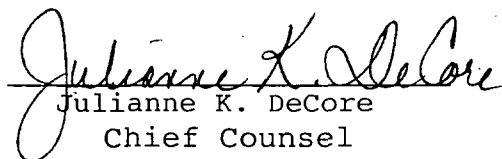
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Dora R. Garcia
Docket No. DRB 10-289

Decided: December 14, 2010

Disposition: Three-month consecutive suspension

<i>Members</i>	Disbar	Three-month Suspension	Repri mand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost						X
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel