

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-104
District Docket No. XIV-2009-0465E

IN THE MATTER OF
ANDREW J. BREKUS
AN ATTORNEY AT LAW

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Decision

Decided: August 15, 2011

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

This matter came 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 violating RPC 8.1(b) (knowingly failing to respond 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 comply with the New Jersey Supreme Court's order requiring him to file an affidavit of compliance for suspended or disbarred attorneys, in accordance with R. 1:20-20.

The OAE filed a memorandum in lieu of a formal brief, recommending a three-month suspension. For the reasons expressed below, we determine that a two-year suspension is warranted.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1986. He was admonished in New Jersey, in 2000, for failure to advise a client about a potential malpractice claim against him and to advise the client to consult with independent counsel about the claim, violation of RPC 1.8(a) and RPC 1.8(h). In the Matter of Andrew J. Brekus, DRB 00-187 (September 25, 2000).

In 2006, respondent was reprimanded for failure to comply with our directive, stemming from his earlier admonition, that he pay the balance of a verbal agreement with his client to settle a potential malpractice claim against him; failure to provide proof of that payment to the OAE, when finally paid; and failure to reply to the grievance or to turn over the client's file to disciplinary authorities, thereby violating RPC 8.4(d) and RPC 8.1(b). In re Brekus, 186 N.J. 409 (2006).

In 2009, on a motion for reciprocal discipline, respondent was suspended for one year, effective September 1, 2008, for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to comply with the

client's reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.5 (b) (failure to provide a client with a writing setting forth the basis or rate of the fee), RPC 1.15(a) (commingling personal and trust funds), RPC 1.16(a) (failure to withdraw if the representation will result in violation of the Rules of Professional Conduct), RPC 1.16(d) (failure to protect a client's interests upon termination of the representation); RPC 5.5(a)(unauthorized practice of law – practicing while ineligible), RPC 7.1(a)(making false or misleading communications about the lawyer's services), RPC 8.4(c) (conduct involving dishonesty, fraud deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In addition to mishandling two client matters, respondent violated a number of the Pennsylvania Rules of Disciplinary Enforcement, including failing to notify clients and others of his transfer to inactive status in Pennsylvania. In re Brekus, 199 N.J. 511 (2009).

Also in 2009, respondent received a censure, after he stipulated to having violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in his 1994 representation of a minor regarding a 1992 automobile accident. Specifically, respondent filed a lawsuit on

behalf of the minor, her parents and her brother, and obtained settlement proceeds for the parents and the brother. In 2000, the minor should have received her portion of the settlement, which was to have been placed with the county surrogate, until she reached the age of majority. Her case, however, was dismissed for lack of prosecution, no escrow account was ever established for her with the surrogate's office, and respondent did not communicate with her. In assessing the suitable degree of discipline, we considered that progressive discipline was not appropriate because respondent's misconduct in that matter had occurred in-between his first two ethics matters for which he had already been disciplined. In aggravation, we took into account that the client never received any monies from her settlement. In re Brekus, 199 N.J. 510 (2009).

In 2010, respondent received another one-year suspension, in a default matter, for misconduct in a workers' compensation and a personal injury matter, arising from his client's fall from a roof. Respondent did not file a complaint to toll the statute of limitations for the personal injury claim and never filed a workers' compensation petition. He was found guilty of gross neglect, lack of diligence, failure to keep the client informed about the status of his matters, and failure to promptly comply with his requests for information. In addition,

respondent made misrepresentations to the client that he was working on the matters, failed to turn over the file to the client, engaged in a pattern of neglect, and failed to cooperate with the district ethics committee's investigation. Respondent remains suspended to date.

Respondent has been ineligible to practice law for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection since September 24, 2007.

Service of process was proper in this matter. On August 31, 2010, the OAE mailed copies of the ethics complaint, by regular and certified mail, to respondent's last known home address listed in the attorney registration records, 215 Croft Ridge Drive, Broomall, Pennsylvania, 19008. The certified mail was returned marked unclaimed. The regular mail was not returned.

On September 28, 2010, the OAE sent a letter to the same address, by regular and certified mail, notifying respondent that, if he did not file an answer to the ethics complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail receipt was returned,

indicating delivery on October 1, 2010. The signature of the recipient is illegible. The regular mail was not returned.

As of the date of the certification of the record, March 28, 2011, respondent had not filed an answer to the ethics complaint.

This matter arose from respondent's failure to comply with a provision of the July 2, 2009 order of suspension. As indicated previously, respondent was suspended for one year, retroactive to September 1, 2008. He did not apply for reinstatement and remained suspended when, on July 19, 2010, he was suspended for an additional one year, effective immediately.

Pursuant to the Court's first order of suspension, respondent was to comply with the provisions of R. 1:20-20, relating to suspended attorneys, requiring him, among other things, to file with the OAE Director, within thirty days, an original of a detailed affidavit, specifying by correlatively numbered paragraphs how he had complied with the provisions of R. 1:20-20. Respondent did not file the required affidavit.

By letter dated October 7, 2009, sent by regular and certified mail to respondent's home and Pennsylvania law office addresses, the OAE advised him of his responsibility to file the affidavit by October 21, 2009. The certified mail receipt for the mail sent to respondent's home address was returned,

indicating delivery on October 9, 2009; respondent had signed the receipt. The regular mail was not returned.

The regular mail that had been sent to respondent's Pennsylvania office address was returned with the notation that the "forwarding time had expired, return to sender." The label affixed to the envelope listed the Broomall address as the forwarding address for respondent's law office. The USPS website showed that the certified mail sent to respondent's office address had been returned to the OAE. However, according to the complaint, the OAE has not received that mail. Respondent neither replied to the OAE's letter, nor did he file the required affidavit.

The complaint alleged that respondent willfully violated the Supreme Court's order and failed to take the steps required of all suspended or disbarred attorneys, "including notifying clients and adversaries of the suspension and providing pending clients with their files." The complaint charged that, in so doing, respondent violated RPC 8.1(b) and RPC 8.4(d).

The facts recited in the complaint support the charges of unethical conduct. Respondent 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).

Respondent violated RPC 8.1(b) and RPC 8.4(d) by failing to file an affidavit of compliance with R. 1:20-20, after having been ordered by the Court to do so, and after the OAE reminded him of his obligation to comply with the requirements of that rule.

The threshold measure of discipline imposed for an attorney's failure to file an 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 respond to the OAE's specific requests that the affidavit be filed, the attorney's failure to answer the complaint, and the existence of a disciplinary history. Ibid.

In the following cases, discipline greater than a reprimand was imposed: In re Gahles, 205 N.J. 471 (2011) (censure in a default matter; following the attorney's temporary suspension, she failed to file the affidavit in compliance with R. 1:20-20, even after the OAE specifically directed her to do so and "faxed" pertinent documents to her to help her draft it; the attorney's ethics history included an admonition and a reprimand); 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 history 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 Girdler, supra, 179 N.J. 227 (three-month suspension in a default matter where the attorney failed to produce the affidavit after prodding by the OAE and after agreeing to do so; the attorney also failed to file an answer to the ethics complaint; the attorney's disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter); In re Sharma, 203 N.J. 428 (2010) (six-month suspension in a default matter; aggravating factors included the default nature of the proceedings, the attorney's ethics history (censure for misconduct in two default matters and a three-month suspension), and his failure to comply with the OAE's specific request that he file the affidavit in compliance with R. 1:20-20); In re Le Blanc, 202 N.J. 129 (2010) (six-month suspension imposed in a default matter where the attorney's ethics history included a

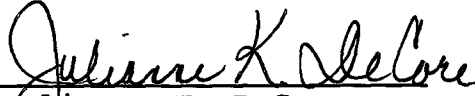
censure, a reprimand, and a three-month suspension; two of the prior disciplinary matters proceeded on a default basis); In re Wood, 193 N.J. 487 (2008) (one-year suspension; attorney failed to file R. 1:20-20 affidavit after a three-month suspension and failed to comply with the OAE's request that he 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).

We find that respondent's ethics history is more significant than the ethics histories of the attorneys cited above: a 2000 admonition, a 2006 reprimand, a 2009 one-year suspension, a 2009 censure, and a 2010 one-year suspension, by way of default. Moreover, this is respondent's second default matter. His long and serious history of discipline and his utter disregard for the ethics system requires discipline greater than the discipline imposed in the above-cases. We, therefore, determine to impose a two-year prospective suspension.

Vice-Chair Frost and Member Clark 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

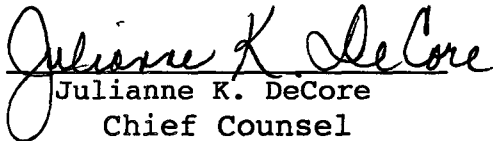
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Andrew J. Brekus
Docket No. DRB 11-104

Decided: August 15, 2011

Disposition: Two-year suspension

Members	Disbar	Two-year 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