

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-154
District Docket No. XIV-2010-205E

IN THE MATTER OF
DONALD S. ROSANELLI
AN ATTORNEY AT LAW

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Decision

Decided: September 27, 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). It arises out of respondent's failure to file an affidavit of compliance with R. 1:20-20, following his November 2009 temporary suspension and his September 2010 three-month suspension, both of which remain in effect.

The OAE requests the imposition of a one-year suspension. In light of respondent's disciplinary history and the default nature of this matter, we determine to impose a six-month prospective suspension for respondent's violations of RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1981. Presently, he resides in Tampa, Florida.

In June 2003, respondent was suspended for six months as a result of his conviction of fourth degree endangering the welfare of a child. In re Rosanelli, 176 N.J. 275 (2003). The criminal charge was the result of respondent's having downloaded twenty-three pictures of children engaged in various sexual acts. On March 26, 2004, he was reinstated to the practice of law. In re Rosanelli, 179 N.J. 289 (2004).

On October 23, 2009, respondent was temporarily suspended, effective November 23, 2009, until he satisfied an award of a district fee arbitration committee and paid a \$500 sanction to the Disciplinary Oversight Committee. In re Rosanelli, 200 N.J. 439 (2009).

On September 22, 2010, in a default matter, the Supreme Court imposed a three-month suspension on respondent for gross

neglect, lack of diligence, failure to communicate with the client, failure to return unearned retainer, and failure to cooperate with disciplinary authorities. In re Rosanelli, 203 N.J. 378 (2010). The Court also conditioned respondent's reinstatement on his satisfaction of the fee award and payment of the \$500 sanction, that resulted in his November 2009 temporary suspension. To date, respondent has not paid the fee award or the sanction. He has not sought reinstatement.

Service of process was proper. On January 28, 2011, the OAE sent a copy of the formal ethics complaint to respondent's last known home address listed in the attorney registration records, 10 Formosa Avenue, Tampa, Florida 33606, by regular and certified mail, return receipt requested. The certified letter was returned to the OAE marked "return to sender unclaimed unable to forward." The letter sent by regular mail was not returned.

On March 7, 2011, the OAE sent a letter to the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned to the OAE

marked "return to sender unclaimed unable to forward." The letter sent by regular mail was not returned.

As of May 17, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

According to the single-count complaint, the Court's October 23, 2009 order temporarily suspending respondent from the practice of law required him to comply with R. 1:20-20, which, in turn, obligated respondent to file with the OAE Director, within thirty days, "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.

On July 14, 2010, the OAE sent a letter to respondent's last known home address in Tampa, by regular and certified mail, return receipt requested. The letter advised respondent of his responsibility to file the affidavit of compliance with R. 1:20-20 and requested its immediate submission. The certified letter was returned to the OAE marked "unclaimed." The letter sent by regular mail was not returned.

Respondent did not reply to the OAE's letter and did not file the R. 1:20-20 affidavit. Moreover, according to the complaint, respondent "has 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."

Based on these facts, respondent was charged with failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice.

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(b)(15) requires a suspended attorney, within thirty days of the 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." Among the correlatively numbered paragraphs are paragraphs (10) and (11), which require the attorney to notify all clients of the

suspension; in pending litigated or administrative matters, to notify all adversaries; and to return client files, if requested.

Failure to file an affidavit demonstrating compliance with R. 1:20-20 "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). The only remaining issue here is the measure of discipline.

The threshold discipline for an attorney's failure to file a R. 1:20-20 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, if the record demonstrates mitigating or aggravating circumstances. Ibid. Examples of aggravating factors include the attorney's failure to comply with the OAE's request that the affidavit be filed, the attorney's failure to answer the complaint stemming from the failure to file the affidavit, 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 for attorney who did not file the required affidavit following a temporary suspension for failure to comply with a fee arbitration determination; prior

reprimand and admonition); In re Garcia, 205 N.J. 314 (2011) (in a default matter, three-month suspension for attorney's failure to file affidavit in compliance with R. 1:20-20 and to comply with the OAE's request that she do so; prior fifteen-month suspension); In re Berkman, 205 N.J. 313 (2011) (three-month suspension for failure to file affidavit, following a nine-month suspension); In re Battaqlia, 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 Girdler, 179 N.J. 227 (2004) (in a default matter, three-month suspension for attorney who failed to produce the affidavit after prodding by the OAE and after agreeing to do so; 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; the attorney did not comply with the OAE's specific request that he file the affidavit of compliance with R. 1:20-20; prior censure for misconduct in two default matters and a three-month suspension); In re LeBlanc, 202 N.J. 129 (2010) (six-month suspension in a

default matter; the attorney's disciplinary record included 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) (six-month suspension in a default matter; 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 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); 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); In re Wargo, 196 N.J. 542 (2009) (one-year suspension for failure to file the R. 1:20-20 affidavit; default case; the attorney's ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and

a combined one-year suspension for misconduct in two separate matters; all disciplinary proceedings proceeded on a default basis); and In re Kozlowski, 192 N.J. 438 (2007) (default matter; two-year suspension for attorney who failed to comply with R. 1:20-20; the attorney's significant disciplinary history included a private reprimand, an admonition, three reprimands, a three-month suspension, and a one-year suspension; the attorney defaulted in six disciplinary matters; the "attorney's repeated indifference toward the ethics system" was found to be "beyond forbearance"). But see In re Moore, 181 N.J. 335 (2004) (in a default matter, attorney received a reprimand for his failure to comply with R. 1:20-20; the attorney had a prior one-year suspension; in mitigation, it was considered that attorneys who fail to comply with the rule "indirectly receive a three-month suspension because the[y] are precluded from seeking reinstatement for three months from the date that the affidavit is filed." In the Matter of Patrick J. Moore, DRB 04-169 (July 19, 2004) (slip op. at 8)).

The OAE argues that a one-year suspension is appropriate because respondent's "disciplinary history, his continuing failure to cooperate with disciplinary authorities, his failure to notify clients, the courts and adversaries of his suspension,

and his failure to file the affidavit required by R. 1:20-20, paint a very clear picture of an attorney who continues to 'thumb his nose' at the disciplinary system." The OAE's recommended one-year suspension is based on "double counting" the facts underlying the violation as aggravating factors. Respondent's failure to cooperate with disciplinary authorities is the result of his failure to file the affidavit. His failure to notify clients, courts, and adversaries of his suspension also falls within the violation of R. 1:20-20. We cannot consider these facts in aggravation.

More appropriately, respondent's conduct is deserving of a six-month suspension. In the matters involving one-year suspensions, the attorneys' ethics histories were more serious, either in number or degree, than those of the attorneys who had received suspensions of six months. Compare In re Wood, supra, 193 N.J. 487 (four matters, ranging from an admonition to a three-month suspension; two of the previous matters were defaults); In re McClure, 182 N.J. 312 (three matters, an admonition and two concurrent six-month suspensions; one suspension was a default); In re Wargo, 196 N.J. 542 (censure and one-year suspension for misconduct in two matters; all matters proceeded as defaults); and In re Kozlowski, 192 N.J.


438 (seven previous matters, ranging from a private reprimand to a one-year suspension; six of the matters proceeded as defaults) with In re Sharma, 203 N.J. 428 (censure for misconduct in two default matters and a three-month suspension); In re LeBlanc, 202 N.J. 129 (censure, reprimand, and a three-month suspension; two of the matters were defaults); and In re Horowitz, 188 N.J. 283 (three-month suspension and a pending one-year suspension in two defaults).

Here, respondent's history consists of a three-month and six-month suspension, one of which proceeded as a default. The three aggravating factors present in this case, namely, the default, respondent's failure to comply with the OAE's specific request that he file the affidavit of compliance, and his disciplinary history were also present in Sharma, LeBlanc, and Horowitz. Accordingly, they do not call for further enhancement of the discipline. We determine that a six-month prospective suspension is the proper degree of discipline in this case.

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 Donald S. Rosanelli
Docket No. DRB 11-154

Decided: September 27, 2011

Disposition: Six-month prospective suspension

Members	Disbar	Six-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