

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-305  
District Docket No. XIV-2010-457E

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IN THE MATTER OF  
ELAINE T. SAINT-CYR  
AN ATTORNEY AT LAW

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Decision

Decided: December 22, 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(b)(15), following her temporary suspension, effective April 29, 2010. The suspension remains in effect.

The OAE requests the imposition of a three-month suspension. For the reasons set forth below, we determine to impose a censure 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 1993. At the relevant times, she maintained an office for the practice of law in Denville.

Respondent has no disciplinary history. However, on March 26, 2010, she was temporarily suspended, effective April 29, 2010, for failure to comply with a determination of the District X Fee Arbitration Committee. In re Saint-Cyr, 202 N.J. 6 (2010). As of the date of this decision, respondent remains suspended.

On June 15, 2010, the New Jersey Lawyers' Fund for Client Protection (CPF) paid \$2500 to settle a claim filed against respondent by Rafael Hernandez.

Service of process was proper. On May 16, 2011, the OAE sent a copy of the formal ethics complaint to respondent's last known home and business addresses listed in the attorney registration records: 341 Diamond Spring Road, Denville, New Jersey 07834; 5 East Main Street, Suite 16B, Denville, New

Jersey 07834-8254; and Post Office Box 1254, Denville, New Jersey 07834. The complaint was sent to each address by regular and certified mail, return receipt requested.

Both letters sent to the East Main Street address were returned to the OAE. The certified letter was marked "Unclaimed." The letter sent by regular mail was marked "Not Deliverable As Addressed - Unable to Forward." The certified letters sent to the Diamond Spring Road address and to the post office box were returned to the OAE marked "Unclaimed." The letters sent by regular mail were not returned.

On June 23, 2011, the OAE sent a letter to respondent at the same three addresses, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed her that, if she failed to do so, the record would be certified directly to us for the imposition of sanction.

Both letters sent to the East Main Street address were returned to the OAE. The certified letter was marked "Unclaimed." The letter sent by regular mail was marked "Not Deliverable As Addressed - Unable to Forward." The certified letters sent to the Diamond Spring Road address and to the post

office box were returned to the OAE marked "Unclaimed." The letters sent by regular mail were not returned.

As of September 12, 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 complaint, pursuant to the Court's March 26, 2010 order temporarily suspending respondent, she was to comply with R. 1:20-20, which, in turn, obligated her, within thirty days, to file with the OAE Director "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 September 27, 2010, the OAE sent a letter to the Diamond Spring Road, East Main Street, and post office box addresses, by regular and certified mail, return receipt requested. The letter advised respondent of her responsibility to file the affidavit, pursuant to R. 1:20-20, and requested its immediate submission. The certified letter sent to the Diamond Spring Road address was returned to the OAE marked "unclaimed." The letter sent by regular mail was not returned. Both letters sent to the Main Street address were returned. The certified letter

was marked "not deliverable as addressed," while the letter sent by regular mail was marked "attempted - not known." The complaint is silent about what happened to the letters sent to the post office box address.

According to the complaint, respondent neither answered the letter nor filed the affidavit.

On May 11, 2011, an OAE representative visited the East Main Street office and observed that "a paper sign for respondent remained on the premises." However, respondent "no longer maintained an office at that location."

According to the complaint, 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." Respondent was charged with failure to cooperate with disciplinary authorities (RPC 8.1(b)) and conduct prejudicial to the administration of justice (RPC 8.4(d)).

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." In the absence of an extension by the Director of the OAE, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) 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 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 request that the

affidavit be filed, the attorney's failure to answer the complaint, and the existence of a disciplinary history. Ibid.

Since Girdler, discipline greater than a reprimand was imposed in the following cases: In re Sirkin, \_\_\_ N.J. \_\_\_ (2011) (in a default, censure imposed on attorney who failed to file affidavit of compliance with R. 1:20-20 after he received a three-month suspension); In re Gahles, 205 N.J. 471 (2011) (in a default, censure imposed on attorney who failed to comply with R. 1:20-20 after a temporary suspension; the attorney had received a reprimand in 1999, an admonition in 2005, and a temporary suspension in 2008 for failure to pay a fee arbitration award, as well as a \$500 sanction; the attorney remained suspended at the time of the default); In re Garcia, 205 N.J. 314 (2011) (in a default, three-month suspension for attorney's failure to comply with R. 1:20-20; her disciplinary history consisted of a fifteen-month suspension); In re Berkman, 205 N.J. 313 (2011) (three-month suspension in a default matter where attorney had a prior nine-month suspension); In re Battaglia, 182 N.J. 590 (2006) (three-month suspension, 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) (the Court imposed a three-month suspension where the attorney's 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 Rosanelli, 208 N.J. 359 (2011) (in a default, six-month suspension for attorney who failed to comply with R. 1:20-20 after a temporary suspension in 2009 and after a three-month suspension in 2010; respondent also had received a six-month suspension in 2003); In re Sharma, 203 N.J. 428 (2010) (six-month suspension; 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 repeated failure to cooperate with disciplinary authorities); In re LeBlanc, 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 Wargo, 196 N.J. 542 (2009) (one-year suspension for failure to file the R. 1:20-20 affidavit; 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); In re Wood, 193 N.J. 487 (2008) (in a default, one-year suspension imposed on attorney who failed to file an R. 1:20-20 affidavit following a three-month suspension; 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) (attorney received a one-year suspension; his disciplinary history consisted of a prior admonition and two concurrent six-month suspensions, one of which was a default; the attorney failed to cooperate with disciplinary authorities in the matter before us, including failing to abide by his promise to the OAE to complete the affidavit; we also noted the need for progressive discipline); In re King, 181 N.J. 349 (2004) (in a default, one-year suspension imposed on attorney with an extensive ethics history of a reprimand, a temporary suspension, a three-month suspension in a default matter, and a one-year suspension; in two of the matters, the attorney failed to cooperate with disciplinary authorities and ignored the OAE's attempts to have her file an affidavit of compliance; she remained suspended since 1998, the date of her temporary suspension); In re Brekus, DRB No. 11-104 (August 15,


2011) (in a default, two-year suspension imposed on attorney with significant ethics history: a 2000 admonition, a 2006 reprimand, a 2009 one-year suspension, a 2009 censure, and a 2010 one-year suspension, also by default); 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 ethics 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, and his "repeated indifference toward the ethics system" was found to be "beyond forbearance;" In the Matter of Theodore F. Kozlowski, DRB 06-211 (November 16, 2006) (slip op. at 11-12)).

As indicated previously, respondent has an ethics record (a temporary suspension), although not a disciplinary record, given that she has not been disciplined before. This is not, thus, the case of an attorney who failed to learn from prior disciplinary sanctions. Nevertheless, she defaulted in this matter. This circumstance alone requires that the "threshold discipline" for failure to comply with R. 1:20-20 be elevated to a censure.

Member Wissinger 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Elaine T. Saint-Cyr  
Docket No. DRB 11-305

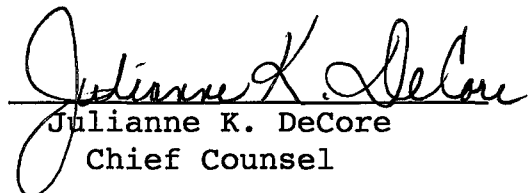
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Decided: December 22, 2011

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Wissinger						X
Yamner			X			
Zmirich			X			
Total:			7			1

  
Julianne K. DeCore  
Chief Counsel