SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 11-294 and 11-322
District Docket Nos. XIV-2009-0255E, XIV-2009-0433E, XIV-2009-0434E, XIV-2010-0081E, XIV-2010-0082E, and XIV-2010-0100E and XIV-2010-0259E

IN THE MATTERS OF	:
NICHOLAS R. MANZI	:
AN ATTORNEY AT LAW	:

Decision

Decided: December 22, 2011

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

These matters came before us on two certifications of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). In the first matter, a five-count complaint charged respondent with engaging in unethical conduct in four

client matters. Two of the counts alleged that respondent knowingly misappropriated client funds.

The second matter charged respondent with misconduct arising out of his failure to comply with R. 1:20-20, following his temporary suspension in February 2010. The OAE seeks a two-year suspension for respondent's misconduct in this second matter.

For the reasons set forth below, we recommend that respondent be disbarred, in the first matter, for knowing misappropriation of client funds. In the second matter, we determine to impose a six-month suspension on respondent for his failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice.

Respondent was admitted to the New Jersey bar in 1993. He has been temporarily suspended since February 16, 2010 for lack of cooperation with disciplinary authorities.

In July 2010, respondent was censured, in a default matter, for lack of diligence, failure to communicate with his client, and practicing while ineligible. In re Manzi, 202 N.J. 339 (2010). In that matter, respondent allowed his client's complaint to be dismissed, failed to take any steps to have the

pleading reinstated, and failed to inform his client of the dismissal, its ramifications, and the options available to him.

On October 5, 2011, the Court imposed a three-month suspension on respondent, in a default matter, for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities in two client matters. In re Manzi, 208 N.J. 342 (2011). In one of those matters, respondent also was guilty of gross neglect and conduct involving dishonesty, fraud, deceit and misrepresentation. Specifically, he told a client that his lawsuit was proceeding in due course, when the opposite was true, that is, the client's answer to the complaint had been stricken due to respondent's failure to comply with discovery requests.

I. DRB 11-294

Service of process was proper. On July 15, 2011, the OAE sent a copy of the formal ethics complaint to respondent's last known office address, 326 Lafayette Avenue, Hawthorne, New Jersey 07506, and to his last known home address, 51 Park Avenue, Hawthorne, New Jersey 07506, via regular and certified mail, return receipt requested.

On July 20, 2011, an individual with initials "NM" signed for the certified letter sent to the Park Avenue address. The letter sent by regular mail was not returned.

The certified letter sent to respondent's Lafayette Avenue office address was not returned. The letter sent by regular mail was returned to the OAE, marked "Not Deliverable as Addressed – Unable to Forward."

On July 22, 2011, the OAE served respondent with the complaint via publication of a notice in that day's edition of the Herald News, a daily newspaper circulated in Bergen, Essex, and Passaic counties. On July 25, 2011, the same notice was published in the New Jersey Law Journal.

Respondent did not file an answer to the complaint.

On August 15, 2011, the OAE sent a letter to respondent at the Lafayette Avenue and Park Avenue addresses, via 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 letters sent to respondent's Park Avenue address were returned to the OAE, marked with a post office box address and stating that the forwarding time for mail sent to the street

address had expired. Yet, according to a post office representative, the post office box had been closed.[1]

Neither letter sent to the Lafayette Avenue address was returned to the OAE.

As of September 1, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

1. **The Ashok B. Choudhari Matter**
District Docket No. XIV-2009-0255E

According to the first count of the complaint, respondent represented Ashok B. Choudhari, the purchaser of an Irvington residential property from Dmitri Zaharchenko. The closing took place on August 17, 2006. Respondent, who acted as the settlement agent, prepared the HUD-1 settlement statement.

The complaint alleged that respondent "received all funds necessary to complete this transaction." Among other things, the HUD-1 reflected the following payments: $1520 for a realty

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[1] The representative also stated that mail was no longer being delivered to the Park Avenue address. Instead, mail directed to that address is returned to the sender.

transfer fee and $220 for recording fees. However, respondent did not record either the deed or the two mortgages and did not pay either the realty transfer fee or the recording fees.

According to the complaint, respondent signed the settlement agent certification on the HUD-1, which provides:

> The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed by the undersigned as part of the settlement of this transaction.
>
> [C,First Count,¶9-¶10;Ex.1.] [2]

Underneath this certification is the following provision:

> WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.
>
> [C,First Count,¶11;Ex.1.]

On December 4, 2007, the law firm of Tompkins, McGuire, Wachenfeld & Barry wrote to respondent, on behalf of its client, First American Title Insurance Company, and informed respondent that his failure to record the deed and both mortgages

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[2] "C" refers to the formal ethics complaint, dated July 14, 2011. "Ex.1" refers to the August 17, 2006 HUD-1 Uniform Settlement Statement.

"jeopardized the interests of its insureds in the Property." On February 21, 2008, the Tompkins firm forwarded an original deed to the Essex County Register of Deeds and Mortgages, requested that it be recorded, and enclosed the $1590 realty transfer fee and the $70 recording fee.

According to the complaint, on August 14, 2008, the Tompkins firm obtained an order certifying Choudhari's mortgages as authentic copies of the original mortgages and permitting the copies to be recorded as originals with the Essex County Register. The two mortgages were recorded on November 17, 2008. The recording fee was $140.

Based on these facts, the first count of the complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly deliver to the client or third person funds that the client or third person was entitled to receive), RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation).

2. **The Demand Audit Matter**
District Docket Nos. XIV-2009-0255E and XIV-2010-0100E

The second count of the complaint alleged that, on September 16, 2009, the OAE conducted a demand audit of respondent's trust and business accounts. The audit uncovered respondent's failure to reconcile his trust account, contrary to the requirements of R. 1:21-6. Accordingly, respondent was unable to identify the amount of funds on deposit in his trust account for each client, at any given time.

The OAE instructed respondent to reconcile the trust account and to provide "an up-to-date list of his clients and the amounts he held in his trust account for each client." As of the date of the complaint, July 14, 2011, respondent had not complied with the OAE's request.

During the audit, the OAE located two attorney trust account checks, pertaining to the Zaharchenko-to-Choudhari transaction. Both checks were dated August 28, 2006 and made payable to the Essex County Clerk. The first, check no. 2441, in the amount of $1520, was described as "realty transfer fee." The second, check no. 2443, in the amount of $260, was described as "recording – Choudhari."

The OAE requested that respondent provide proof that he had reimbursed the Tompkins firm for its payment of the realty transfer and recording fees. Respondent did not comply with that request. However, on January 14, 2010, he sent a $1730 check to the Tompkins firm, representing reimbursement of the realty transfer and recording fees. When the firm deposited the check, the bank did not honor it because, on February 16, 2010, the Supreme Court had entered an order freezing respondent's trust account.

According to the complaint, respondent had received sufficient funds to pay all client obligations listed on the HUD-1 for the Zaharchenko-to-Choudhari transaction. Yet, he did not pay the $1520 realty transfer fee or the $260 in recording fees. As a result, these funds should have remained in the attorney trust account until they were disbursed. They did not.

On February 12, 2010, the balance in respondent's attorney trust account was $1,791.44. On that date, according to the complaint, respondent issued trust account check no. 2565, payable to himself, in the amount of $2500. The complaint alleged that respondent knew, at the time that he issued the check, that client funds would be invaded, if the check were cashed.

When check no. 2565 was presented for payment, there was not enough money in the trust account to cover it, as the balance in the account was only $1,791.44. Thus, the check was returned for insufficient funds.

Based on these facts, the second count of the complaint charged respondent with having violated RPC 1.15(a) (failure to safeguard funds), RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6), RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(a) (attempt to violate the RPCs by his failed attempt at knowingly misappropriating client funds).

3. "The Laundry Room" Matter
District Docket No. XIV-2009-0434E

Respondent represented A & J Realty Holdings d/b/a The Laundry Room in a commercial dispute with its landlord, Diabes Enterprises and Lyndhurst Residential Communities. At some point, respondent filed suit on behalf of The Laundry Room, which settled for $10,000 in June 2008.

On August 28, 2008, respondent deposited the gross settlement proceeds into his attorney trust account. Nearly a

year later, on August 3, 2009, respondent issued a trust account check to A & J Realty Holdings, in the amount of $5336, which represented the client's net settlement proceeds. However, between August 28, 2008 and August 3, 2009, these settlement proceeds had not remained intact in respondent's trust account.

The complaint detailed the transactions that allegedly invaded The Laundry Room's settlement proceeds. On June 30, 2009, the trust account balance was $3,704.95. The balance remained below $5336 through July 2, 2009 and also from July 10 through July 14, 2009.

Between June 29 and July 14, 2009, respondent issued three trust account checks to himself, totaling $1800, and three trust account checks to his paralegal, Sean Hogan, totaling $2100. He also electronically transferred $356.28 to Verizon Wireless. According to the complaint, at the time that respondent issued these checks, he knew that client funds would be invaded, when they were cashed.

Based on these facts, the complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.15(a) (knowing misappropriation of client funds) and RPC 1.15(b) (failure to promptly deliver to the client or third person funds that the client or third person were entitled to receive).

4. **The Edith Tirado Matter**
District Docket Nos. XIV-2010-0081E and XIV-2010-0082E

According to the complaint, respondent represented Edith Tirado in the purchase of real estate from "Valera." On December 22, 2009, Tirado's mortgage company wired $324,118.82 into respondent's attorney trust account. The next day, respondent deposited Tirado's $1000 initial deposit. Presumably, the closing took place with a few days of respondent's receipt of these funds.

The complaint alleged that, between December 29, 2009 and February 3, 2010, respondent should have been holding a minimum of $3159 in his trust account, on behalf of Tirado. Presumably, this amount represented Tirado's $1000 deposit, plus $2159, which was eventually paid to the Essex County Clerk to cover an expense related to the Tirado real estate transaction. Yet, between January 11 (when the balance was $2,148.70) and February 3, 2010 (when the balance was -$1,485.29), the trust account balance was below $3159 every day. The account was not back in trust until February 4.

Between January 12 and 25, 2010, the bank paid two trust account checks that respondent had issued to himself (totaling $650), one trust account check to Horizon Blue Cross/Blue Shield

of New Jersey ($1,999.99), and one trust account check to his paralegal, Sean Hogan ($1200). These payments totaled $3,049.99. The complaint alleged that, at the time that respondent made the payments, he knew that client trust funds would be invaded.

The bank paid the Horizon check, on January 25, 2010, which reduced the balance in the trust account to -$651.29, when there should have been at least $3159 in it. Four days later, respondent made a $1500 correcting deposit from one of his other bank accounts, which, the complaint alleged, was evidence that he knew of the invasion.[3]

On February 3, 2010, the bank paid trust account check no. 1676, in the amount of $2159, which was issued to the Essex County Clerk on January 22, 2010, in payment of an obligation stemming from the Tirado real estate transaction. The payment of this check caused a $1,485.29 negative balance in the trust account. The next day, respondent made two "correcting

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[3] This deposit raised the trust account balance to $1,514.71, or $1,644.29 less than the $3159 that respondent should have been holding in trust for Tirado.

deposit[s]," totaling $5500, which, according to the complaint, "evidenc[ed] knowledge of his invasion." The deposits raised the balance in the trust account to $1,514.71.

Between February 5 and 8, 2010, the bank paid one trust account check that respondent had issued to himself ($750) and two electronic transfers to vendors from the trust account (totaling $499.66). These payments reduced the balance in the trust account to $292.05.

On February 10, 2010, Tirado cashed respondent's trust account check no. 1658, in the amount of $1000, which represented the return of her deposit. This reduced the balance in the trust account to -$707.95.

Based on these facts, the fourth count of the complaint charged respondent with having violated RPC 1.15(a) (knowing misappropriation of client and escrow funds).

5. The Thomas M. Rioux Matter
District Docket No. XIV-2010-0433E

According to the fifth count of the complaint, on December 2, 2004, the Superior Court of New Jersey entered a dual judgment of divorce, which incorporated the terms of a property settlement agreement between Thomas M. Rioux (Thomas) and

Deborah Rioux (Deborah). More than three years later, on December 21, 2007, Deborah's lawyer, Kenneth C. Dolecki, wrote to respondent and reminded him to review with his client the "trust account statement and proposed distribution," which had been faxed to respondent on December 5, 2007.

On January 24, 2008, Dolecki sent a follow-up letter to respondent, noting that he had not heard from him with respect to the "trust account statement and proposed distribution." The letter also noted that respondent had failed to reply to "four to five messages" left for respondent at his office, since December 5, 2007.

On April 8, 2008, Dolecki faxed to respondent a copy of a "Supplement to Proposed Distribution" for the period November 1, 2007 through April 8, 2008. On that same date, respondent faxed Dolecki about the distribution of his client's proceeds from the divorce proceeding.

On April 30, 2008, Dolecki issued trust account check no. 10576, in the amount of $31,578, payable to respondent's trust account, for the benefit of Thomas. Respondent deposited the check into his trust account on May 2, 2008.

Within two months of his deposit of the proceeds into his trust account, respondent disbursed the funds required to

satisfy his attorney's fee. However, it was not until thirteen months later that he disbursed his client's portion of the proceeds to him. The funds remained intact during this time.

Based on these facts, the fifth count of the complaint charged respondent with having violated RPC 1.3 (lack of diligence) and RPC 1.15(b) (failure to promptly deliver to the client or third person funds that the client or third person was entitled to receive).

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). Nevertheless, the facts recited in the complaint support some, but not all, of the charges of unethical conduct.

In the Choudhari matter, we find that respondent failed to record the deed and the two mortgages, even after counsel for the title company wrote to him and informed him of the danger of his failure to record the documents.

Counsel for the title insurance company recorded the deed on February 21, 2008, more than a year-and-a-half after the closing. Moreover, counsel was required to obtain a court order

permitting the recording of the mortgages, which took place on November 17, 2008, more than two years after the closing.

Respondent violated RPC 1.1(a) and RPC 1.3, when he failed to record either the deed or the mortgages to the point where counsel for the title insurance company finally had to seek a court order to permit it to undertake the task that was respondent's.

He did not violate RPC 1.15(b), however. The rule requires an attorney to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive." Nevertheless, the rule has never been interpreted to govern the payment of bills, except under certain circumstances, not applicable here.

Similarly, respondent did not violate RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) or RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation), when he certified, on the HUD-1, that the document was "a true and accurate account of the funds disbursed by the undersigned as part of the settlement of this transaction." To be sure, the realty transfer and recording fees identified on the HUD-1 were never paid by

respondent. However, there was no evidence that, at the time that the HUD-1 was prepared and the figures were identified, respondent had no intention of satisfying these obligations out of the settlement proceeds.

To conclude, the facts set forth in the first count of the complaint support the findings that respondent violated only RPC 1.1(a) and RPC 1.3.

The allegations of the second count of the complaint are sufficient to support the conclusion that respondent failed to comply with the recordkeeping provisions of R. 1:21-6, failed to cooperate with disciplinary authorities, and attempted to knowingly misappropriate client funds. The allegations do not support the conclusion that respondent failed to safeguard client funds or knowingly made a false statement of material fact to disciplinary authorities.

First, respondent violated RPC 1.15(d), when he failed to reconcile his trust account, as required by R. 1:21-6. Second, he violated RPC 8.1(b), when he failed to reconcile the account and provide an up-to-date list of his clients and their funds in his trust account, as directed by the OAE, and when he failed to comply with the OAE's request that he provide proof that he had

reimbursed the Tompkins firm for its payment of the realty transfer and recording fees.

Third, respondent violated RPC 8.4(a), which provides that an "attempt to violate the Rules of Professional Conduct" constitutes "professional misconduct." According to the complaint, the OAE located two checks that respondent had written with respect to the Choudhari transaction, but which had never been cashed: one representing payment of the $1520 realty transfer fee and the other representing $260 in recording fees. Thus, the complaint alleged, $1780 should have remained in respondent's trust account.

On February 12, 2010, respondent's trust account balance was $1,791.44. However, on that date, respondent wrote himself a trust account check for $2500, knowing that trust account funds would be invaded, if the check were cashed. As it turned out, when the check was presented to the bank, it was returned for insufficient funds. Therefore, no invasion of funds actually occurred.

Because there was no actual invasion of trust account funds, we find that respondent violated RPC 8.4(a), in that he attempted to knowingly misappropriate the monies. He was unsuccessful only because there were insufficient funds to cover

the check. Respondent did not violate RPC 1.15(a), however, because the funds were never invaded.

Moreover, nothing in the allegations of the second count of the complaint supports the determination that respondent knowingly made a false statement of material fact to disciplinary authorities. Although the OAE requested him to do several things, which he did not, his failure to act did not represent a false statement. The RPC 8.1(a) charge is, thus, dismissed.

To conclude, we find that respondent violated RPC 1.15(d), RPC 8.1(b), and RPC 8.4(a).

In "The Laundry Room" matter, respondent knowingly misappropriated settlement funds belong to his client, The Laundry Room. The case settled for $10,000 in June 2008. Respondent deposited the gross settlement proceeds into his trust account on August 28, 2008. He did not pay the $5336 due to A & J Realty Holdings until August of 2009. In the interim, however, the $5336 did not remain intact in respondent's trust account.

On June 30, 2009, the trust account balance was $3,704.95. It remained below $5336 through July 2, 2009 and then between July 10 and 14, 2009. During this period, respondent wrote

$1800 in trust account checks to himself and $2100 in checks to Hogan, his paralegal. He also electronically transferred $356.28 to Verizon Wireless. At the time that he wrote these checks, he knew that client funds would be invaded, in the event the checks were cashed.

Respondent's one-year delay in turning over to his client its portion of the settlement proceeds constituted a violation of RPC 1.3 and RPC 1.15(b). Much more serious, however, was respondent's use of the client's funds, while they sat in his trust account. Specifically, he wrote checks against the funds, knowing that they would be invaded. The funds were, in fact, invaded, a knowing misappropriation of client funds.

To conclude, the allegations of the third count of the complaint support the conclusion that respondent violated RPC 1.3 and RPC 1.15(b) and that he knowingly misappropriated client funds.

In the Tirado matter, too, respondent knowingly misappropriated $2159 in escrow funds that should have been paid to the Essex County Clerk and $1000 in client funds belonging to Tirado. To use one example, the $2000 check issued to Horizon Blue Cross and Blue Shield caused a negative balance in the trust account, thereby invading those trust account funds.

Moreover, despite respondent's subsequent "correcting deposit," when the check to the Clerk was paid, it caused a $1400 deficit in the trust account, thereby invading Tirado's funds again.

Based on these facts, respondent knowingly misappropriated client and escrow funds, a violation of RPC 1.15(a).

In the Rioux matter, respondent violated RPC 1.3 and RPC 1.15(b). On December 5, 2007, Deborah's lawyer faxed the "trust account statement and proposed distribution" to respondent for his review. Respondent did not reply. He ignored counsel's December 21, 2007 and January 24, 2008 follow-up letters, as well as four-to-five telephone calls that were made to his office. It was not until April 8, 2008 that respondent acted on the proposed distribution. These facts support the conclusion that respondent lacked diligence in his handling of the divorce matter.

On May 2, 2008, respondent deposited into his attorney trust account a $31,578 check issued by Dolecki. Although he took his attorney fees from the funds within two months, he did not turn over his client's portion of the monies until thirteen months later. By failing to promptly deliver funds that his client was entitled to receive, respondent violated RPC 1.15(b).

There remains for determination the quantum of discipline to be imposed on respondent for his multiple ethics infractions in DRB 11-294. Because the complaint alleges facts sufficient to sustain the conclusion that respondent knowingly misappropriated client and escrow funds in two client matters, we recommend his disbarment. In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985). There is no need to address the measure of discipline that would be imposed for respondent's other violations in this matter.

II. DRB 11-322

Service of process was proper. On March 1, 2011, the OAE sent a copy of the formal ethics complaint to respondent's last known office address, 326 Lafayette Avenue, Hawthorne, New Jersey 07506, and to his last known home address, 51 Park Avenue, Hawthorne, New Jersey 07506, via regular and certified mail, return receipt requested.

On March 4, 2011, an individual with the initials "NM" signed for the certified letter sent to the Park Avenue address. The letter sent by regular mail was returned to the OAE, marked "Not Deliverable As Addressed Unable to Forward."

The certified letter sent to respondent's Lafayette Avenue office address was returned to the OAE, marked "Unclaimed." The letter sent by regular mail was returned to the OAE, marked "Not Deliverable as Addressed – Unable to Forward."

On April 8, 2011, the OAE sent a letter to respondent at the Park Avenue address, via 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. Both letters were returned to the OAE, marked "Not Deliverable As Addressed Unable to Forward."

On April 21, 2011, the District XI Ethics Committee (DEC) secretary, Robert Stober, called the OAE and reported that attorney Richard J. Baldi had informed him that respondent wanted Baldi to represent him in this matter. Baldi requested a copy of the complaint.

On May 4, 2011, the OAE received written notice of Baldi's representation of respondent. On June 1, Baldi informed the OAE that he no longer represented respondent.

On July 18, 2011, an OAE representative spoke to "Mike" at the Hawthorne Post Office, who stated that mail sent to respondent's Lafayette and Park Avenue addresses was not being

delivered but, instead, was being returned to the sender. The post office could not provide a forwarding address for respondent.

On July 22, 2011, the OAE served respondent with the complaint via publication of a notice in that day's edition of the Herald News, a daily newspaper circulated in Bergen, Essex, and Passaic counties. On July 25, 2011, the same notice was published in the New Jersey Law Journal.

Respondent did not file an answer to the complaint.

As of September 21, 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 February 2010 order temporarily suspending respondent from the practice of law required him to comply with R. 1:20-20, which, in turn, obligated him 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 September 2, 2010, the OAE sent a letter to respondent's last known home address, by regular and certified mail, return receipt requested. The letter advised respondent of his responsibility to file the affidavit, pursuant to R. 1:20-20, and requested a response by September 16, 2010. 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 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 failing to cooperate with disciplinary authorities (RPC 8.1(b)) and engaging in 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).

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

In Girdler, the attorney received a three-month suspension, in a default matter, for his failure to comply with R. 1:20-

20(e)(15). Specifically, after prodding by the OAE, he failed to produce the affidavit of compliance, even though he had agreed 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.

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)).

Respondent's conduct warrants more than a reprimand for two reasons. First, this is a default. Second, respondent has an ethics history consisting of a censure and a three-month suspension (both defaults), and a temporary suspension that has been in place for more than a year. The three-month suspension

also remains in effect. Together, these factors justify the imposition of a six-month suspension.

In support of its position that a two-year suspension is appropriate for respondent's misconduct, the OAE asserts that a reprimand is the presumptive sanction for failure to comply with R. 1:20-20 and, that, in a default matter, the presumptive sanction is enhanced. With this foundation, the OAE argues that a 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 two-year suspension is based on "double counting" the facts underlying the violation as aggravating factors as well. 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. These facts cannot be considered in aggravation.

We rejected the OAE's arguments in the Rosanelli matter, which was nearly identical to the case now before us, and imposed a six-month suspension. Moreover, a six-month suspension is consistent with the discipline imposed in Sharma and LeBlanc.

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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Nicholas R. Manzi
Docket No. DRB 11-294

Decided: December 22, 2011

Disposition: Disbar

Members	Disbar	Reprimand	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
Julianne K. DeCore
Chief Counsel