

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-456  
District Docket Nos. XIV-2010-0683E  
and XIV-2011-0431E

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IN THE MATTER OF  
ARTHUR E. SWIDLER  
AN ATTORNEY AT LAW

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Decision

Decided: June 13, 2012

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), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 8.1(b) (failure to reply 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 file the required R. 1:20-20 affidavit, following his suspension from the practice of law.

The OAE filed a memorandum, in lieu of a formal brief, recommending the imposition of a three-month suspension. For the

reasons expressed below, we find that more severe discipline, a three-year suspension, is warranted.

Respondent was admitted to the New Jersey bar in 1985. At the relevant time, he maintained a law office in Trenton, New Jersey.

In 2007, respondent received a reprimand, in a default matter, for gross neglect in a foreclosure proceeding. After the client paid his retainer, respondent took no action on her behalf, ultimately resulting in an Order of Taking on her property. The Supreme Court ordered him to refund his client's retainer. He was also guilty of failure to cooperate with disciplinary authorities. In re Swidler, 192 N.J. 80 (2007).

In 2009, respondent was temporarily suspended for less than a month for failure to comply with a fee arbitration determination, directing him to refund \$700 to a client. In re Swidler, 200 N.J. 440 (2009).

In another default matter, the Court suspended respondent for three months, effective August 13, 2010, for negligent misappropriation of client trust funds; numerous recordkeeping deficiencies; failure to collect funds required in two separate closings; failure to make payments, following one of the closings; and failure to cooperate with the OAE during its investigation. The Court's order directed respondent to submit

to the OAE, upon reinstatement and for a two-year period, quarterly reconciliations of his attorney accounts, prepared by an OAE-approved certified public accountant. In re Swidler, 202 N.J. 334 (2010).

In 2011, in yet another default matter, respondent received a six-month suspension, effective November 14, 2010, for grossly neglecting a matter; engaging in a concurrent conflict of interest; failing to hold funds of third persons separate from his own property; failing to disclose a material fact to a third person to avoid assisting a criminal or fraudulent act by a client; failing to cooperate with disciplinary authorities; and engaging in conduct involving dishonesty, deceit or misrepresentation. The misconduct stemmed from respondent's representation of a client in a real estate transaction where he acted as the attorney for the buyer and the settlement agent. Specifically, respondent failed to file the mortgage; failed to disclose to the title company that there was an "open" mortgage on the property; improperly deposited funds into his business account, rather than his trust account; failed to reply to requests for information from a disciplinary authority; failed to file an answer to the ethics complaint; and failed to obtain informed, written consent from the parties, when representing

the buyer and seller in the transaction. In re Swidler, 205 N.J. 260 (2011).

Service of process was proper in this matter. On September 29, 2011, the OAE sent copies of the complaint, by regular and certified mail, to respondent's last known home and office addresses listed in the attorney registration records, 10 Birkshire Road, Hamilton, New Jersey 08619, and 222 South Broad Street, Trenton, New Jersey 08608.

The certified mail receipt for the Hamilton address indicated delivery on October 3, 2011. The signature of the recipient is illegible. The regular mail was not returned. The certified mail receipt for the Trenton address was returned marked "Unclaimed." The regular mail was not returned.

On November 29, 2011, the OAE sent a letter to respondent, via regular and certified mail, to the same addresses. The letter notified 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 or RPC 8.1(b).

The certified mail receipt sent to the Hamilton address showed delivery on December 2, 2011. The signature of the

recipient is illegible. The regular mail was not returned. Neither the certified nor the regular mail sent to the Trenton address was returned. The USPS Track & Confirm website showed that, on December 2, 2011, a notice had been left for respondent about the certified mail.

As of the date of the certification of the record, December 14, 2011, respondent had not filed an answer to the complaint.

As indicated previously, by Supreme Court order filed July 19, 2010, respondent was suspended from the practice of law for three months, effective August 13, 2010. In a subsequent order, filed March 10, 2011, he was suspended for an additional six months, effective (and retroactive to) August 13, 2010. Respondent did not seek reinstatement and remains suspended to date.

Both Court orders directed respondent to comply with R. 1:20-20, which requires, among other things, that an attorney file with the Director of the OAE, within thirty days after the date of the order of suspension, "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 failed to file such an affidavit.

By letter dated March 3, 2011, sent by certified and regular mail to the Hamilton and Trenton addresses, the OAE informed respondent of his duty to file the affidavit of compliance by March 17, 2011.

The certified mail receipt for the Hamilton address indicated delivery on March 7, 2011. The signature of the recipient is illegible. The regular mail was not returned. The certified mail sent to respondent's Trenton address was returned marked "Not Deliverable as Addressed Unable to Forward." The regular mail was not returned.

Respondent did not file the required affidavit. As indicated previously, the complaint charged him with violating RPC 8.1(b) and 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. 1:40-4(f).

By failing to file the affidavit of compliance, respondent is guilty of violating 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 an 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, 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, a default matter, the attorney received a three-month suspension 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 private reprimand, a public reprimand, and a three-month suspension in a default matter.

Since Girdler, the discipline imposed on attorneys who have failed to comply with R. 1:20-20 and who have defaulted has ranged from a censure to a two-year suspension. See, e.g., In re Sirkin, 208 N.J. 432 (2011) (censure in a default matter for attorney who failed to file an affidavit of compliance after he received a three-month suspension and after he was prompted to do so by the OAE); In re Gahles, 205 N.J. 471 (2011) (censure for attorney who failed to comply with R. 1:20-20 after a temporary suspension and after being prompted by the OAE to do

so; 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 and a \$500 sanction; the attorney remained suspended at the time of the default); In re Garcia, 205 N.J. 314 (2011) (three-month suspension for attorney's failure to comply with the OAE's specific request that she file the affidavit; her disciplinary history consisted of a fifteen-month suspension); In re Berkman, 205 N.J. 313 (2011) (three-month suspension for attorney who had a prior nine-month suspension); In re Rosanelli, 208 N.J. 359 (2011) (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; the attorney had also received a six-month suspension in 2003); In re Sharma, 203 N.J. 428 (2010) (six-month suspension for attorney whose ethics history included a censure for misconduct in two default matters and a three-month suspension; the attorney failed to comply with the OAE's request that he file the affidavit and repeatedly failed to cooperate with disciplinary authorities); In re LeBlanc, 202 N.J. 129 (2010) (six-month suspension for attorney whose 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 for attorney who



failed to file an R. 1:20-20 affidavit following 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); In re McClure, 182 N.J. 312 (2005) (one-year suspension for attorney whose 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) (one-year suspension for attorney with an extensive ethics history: a reprimand, a temporary suspension for failure to return an unearned retainer, 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; the attorney remained suspended since 1998, the date of her temporary suspension); and In re Brekus, 208 N.J. 432 (2011) (two-year suspension for attorney with a 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).

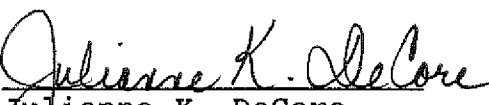
This is respondent's fourth default matter. His prior three default matters resulted in a reprimand, a three-month suspension, and a six-month suspension. He is a multiple-time offender whose violations include gross neglect, negligent misappropriation, failure to hold funds of third parties separate from the lawyer's own funds, conflict of interest, recordkeeping improprieties, failure to disclose a material fact to a third person and conduct involving dishonesty, deceit or misrepresentation. He has also consistently failed to cooperate with the ethics process, thumbing his nose at the system and showing a disrespect if not contempt, for the process that cannot be tolerated.

In order to protect the public and maintain the public's confidence in the bar, as well as the integrity of the disciplinary system, we determine that a three-year suspension is warranted. In our view, this respondent was on the cusp of disbarment. Were it not for the lack of precedent, we would have recommended respondent's disbarment.

Member Zmirich voted for a two-year suspension. Member Doremus 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 Arthur E. Swidler  
Docket No. DRB 11-456

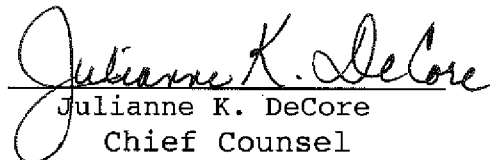
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Decided: June 13, 2012

Disposition: Three-year suspension

<b>Members</b>	Disbar	Three-year suspension	Two-year suspension	Reprimand	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus						X
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich			X			
<b>Total:</b>		7	1			1

  
Julianne K. DeCore  
Chief Counsel