

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-338
District Docket No. XIV-2011-0425E

IN THE MATTER OF
ERIC LENTZ
AN ATTORNEY AT LAW

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Decision

Decided: March 19, 2013

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f)(2). The complaint charged respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE urged us to impose either a censure or a three-month suspension. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1976. He has been temporarily suspended, since December 31, 2010, for

failing to comply with a fee arbitration determination requiring him to refund \$20,000 to his clients and to pay a \$500 sanction to the Disciplinary Oversight Committee In re Lentz, 204 N.J. 567 (2010).

In 2012, respondent was reprimanded, in a default matter, for lack of diligence, failure to communicate with a client, failure to withdraw from the representation, and failure to cooperate with disciplinary authorities. In the order imposing the reprimand, the Court continued respondent's temporary suspension. He remains suspended to date. In re Lentz, 211 N.J. 3 (2012).

Service of process was proper. In June 2012, the OAE sent a copy of the complaint by certified and regular mail to respondent's last known address listed in the annual registration records, 181 Parsonage Hill, Short Hills, New Jersey 07078.¹ The certified mail receipt, bearing respondent's signature, was returned to the OAE. The regular mail was not returned.

¹ This is both respondent's home and office address.

By letter dated July 17, 2012, the OAE advised respondent that, if he did not file an answer to the complaint within five days, the allegations of the complaint would be deemed admitted, and the record would be certified to us for the imposition of discipline. The letter further served to amend the complaint to charge respondent with violating RPC 8.1(b) for failure to file an answer. The letter was sent by certified and regular mail to the Short Hills address. The certified mail receipt was returned, signed by respondent. The regular mail was not returned. Respondent did not file an answer.

The facts that gave rise to this matter are as follows:

As previously noted, the Court ordered respondent temporarily suspended from the practice of law, effective December 31, 2010, until he satisfied a fee arbitration award and paid a sanction of \$500. Respondent paid neither the award nor the sanction. Pursuant to the Court's order, respondent was directed to comply with R. 1:20-20, which requires, among other things, that a suspended attorney,

within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director 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.

Respondent failed to comply with the mandate of the rule.

By letter dated October 11, 2011, the OAE advised respondent of his responsibility to file the R. 1:20-20 affidavit and of the possible consequences, if he failed to do so. The OAE requested a reply by October 25, 2011. The letter was sent by certified and regular mail to respondent's Short Hills address. The certified mail was returned, marked "unclaimed." The regular mail was not returned to the OAE. Respondent did not reply to the OAE's letter or file the affidavit.

On May 9, 2012, the OAE telephoned respondent and spoke with him. During that conversation, respondent was reminded that he had failed to file the R. 1:20-20 affidavit and advised that his dereliction would result in the OAE's filing a complaint against him that would result in further discipline. Respondent was also advised that, if he failed to file the affidavit, he could be precluded from resuming his practice for an additional six months, after applying for reinstatement. R. 1:20-21(i)(A). Pursuant to respondent's request, a copy of the OAE's October 11, 2011 letter, the order of suspension, and R.

1:20-20 were faxed to him. The fax transmittal sheet instructed respondent to forward the affidavit to the OAE by May 18, 2012.

As of the date of the complaint, June 14, 2012, respondent had not contacted the OAE or filed the R. 1:20-20 affidavit.

The complaint alleged that respondent willfully violated the Court's order by failing to take the steps required of all suspended or disbarred attorneys, in violation of 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. 1:20-4(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 the R. 1:20-20 affidavit 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, Girdler failed to produce the affidavit of compliance, even though he had agreed to do so. Girdler'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 Fox, 210 N.J. 255 (2012) (in a default, censure imposed on attorney who failed to file

the affidavit of compliance following a temporary suspension); In re Sirkin, 208 N.J. 432 (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 for attorney who failed to comply with R. 1:20-20 after a temporary suspension and then 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, 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 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 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) (six-month suspension for attorney who failed to comply with R. 1:20-20 after a temporary suspension; the attorney ignored the OAE's specific request that he submit the affidavit, defaulted in the matter, and had a disciplinary history consisting of a three-month suspension in a default matter and a six-month suspension); 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); and In re Brekus, 208 N.J. 341 (2011) (in a default, two-year suspension imposed on attorney with significant ethics history: an admonition, a reprimand, a one-year suspension, a censure, and another one-year suspension, also by default).

The OAE filed a memorandum with us, suggesting that the appropriate discipline is either a censure or a three-month suspension. The OAE pointed to In re Fox, supra, 210 N.J. 255,

where a censure was imposed on an attorney who failed to file the R. 1:20-20 affidavit after the OAE's request and allowed the matter to proceed as a default. Here, respondent failed to file the affidavit, despite the OAE's requests and numerous opportunities to do so, allowed this matter to proceed as a default, and has been previously disciplined.

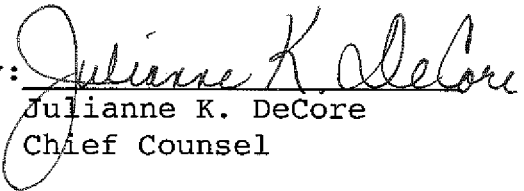
We agree with the OAE that more than the threshold measure of discipline - a reprimand - is warranted in this case. Respondent did not file an answer to the complaint. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). Thus, this factor alone enhances the discipline for respondent's misconduct to a censure.

As to whether more serious discipline is mandated, respondent's lack of a significant disciplinary history distinguishes this case from those cases where three-month suspensions were imposed on attorneys who had more serious disciplinary records, either in number or degree: Garcia (fifteen-month suspension), Berkman (nine-month suspension),

Girdler (public) reprimand, private reprimand, and a three-month suspension), Battaqlia (two concurrent three-month suspensions and a temporary suspension), and Raines (private reprimand, three-month suspension, six-month suspension, and a temporary suspension). Although respondent has been temporarily suspended, his only prior discipline is a reprimand. His disciplinary history is not as serious as those of the attorneys where suspensions were imposed. A censure is, thus, sufficient 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

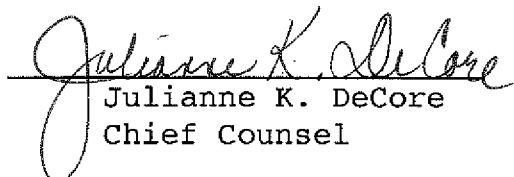
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eric S. Lentz
Docket No. DRB 12-338

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Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


Julianne K. DeCore
Chief Counsel