

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-366  
District Docket Nos. XIV-2011-0430E  
and XIV-2011-0658E

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IN THE MATTER OF  
HAMDI M. RIFAI  
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 default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated 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 each of his two suspensions.

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

reasons expressed below, we determine that a one-year suspension is appropriate.

Respondent was admitted to the New Jersey bar in 1994. At the relevant time, he maintained a law practice in Rochelle Park, New Jersey.

In 2002, respondent was reprimanded (on a motion for discipline by consent) for his conduct in a complex litigation matter that he had taken over from another law firm. Some problems arose during the transition period, for which respondent was not responsible. However, afterwards, his inaction led to the filing of default judgments and enforcement actions against his clients. Eventually, respondent obtained an order vacating the default judgments. After the court granted the plaintiff's unopposed motion to dismiss the defendants' counterclaim and answer without prejudice, respondent's clients retained new counsel. Respondent, however, would not turn over the file to the new attorney. In the disciplinary matter that ensued, respondent stipulated that he was guilty of gross neglect, lack of diligence, failure to communicate with the clients, and failure to turn over a file upon termination of the representation. In re Rifai, 171 N.J. 435 (2002).

In 2007, respondent was again reprimanded, this time for negligent misappropriation of trust funds and recordkeeping violations. In re Rifai, 189 N.J. 205 (2007).

In 2011, respondent was suspended for three months in a default matter. Over the course of a protracted municipal court trial, he referred to the prosecutor, among other things, as "an idiot;" forcefully bumped into the investigating officer, during a break in the trial; repeatedly had the trial postponed by offering various excuses, at least one of which was found to be untrue; challenged the district ethics committee's authority to investigate the grievance; raised his voice to the committee investigator; and was extremely uncooperative and belligerent, during the investigation. In all, he was found guilty of violating RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process and failure to expedite litigation), RPC 4.4 (failure to respect the rights of third persons), RPC 8.1(b) (failure to cooperate with the ethics investigation), and 8.4(d) (conduct prejudicial to the administration of justice). The Court ordered respondent to contact the Bergen County Committee on Professionalism to help him establish a program to develop and maintain courtesy and

civility in his professional dealings with others. In re Rifai, 204 N.J. 592 (2011).<sup>1</sup>

Respondent was again suspended for three months, effective June 10, 2011, for mishandling two matters for the same client. In a federal tort claim matter, he failed to supply information that was missing in forms he had filed and allowed the statute of limitations to expire. In a malpractice action, he failed to restore a complaint, after its dismissal, and failed to prosecute the claim. He was found guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to expedite litigation, misrepresentations, and failure to turn over the file to the client's new attorney in the malpractice case. In re Rifai, 206 N.J. 553 (2011).

Service of process was proper in this matter. On June 15, 2012, 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, 3505 Gates Court, Morris Plains, New Jersey, and 87 West Passaic

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<sup>1</sup> The Supreme Court granted respondent's first motion to stay the effective date of the suspension from February 14, 2011 to March 9, 2011 (In re Rifai, 205 N.J. 49 (2011)), but denied his second motion seeking a further stay. In re Rifai, 205 N.J. 88 (2011).

Street, First Floor, Rochelle Park, New Jersey 07662, respectively.

The certified mail sent to the Morris Plains address was returned marked "Unclaimed." The regular mail was returned marked "UTF" (unable to forward).

The regular and certified mail sent to the Rochelle Park address was returned marked "Not Deliverable as Addressed - Unable to forward."

On July 31, 2012, the OAE sent a second letter to respondent, by regular and certified mail, to the Morris Plains address. The letter notified him 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 of RPC 8.1(b).

The certified mail was returned marked "Unclaimed" and "Not Deliverable as Addressed Unable to Forward." The regular mail was not returned.

On August 14, 2012, the OAE sent an address information request to the Postmaster in Morris Plains, New Jersey, seeking verification of respondent's address. On August 27, 2012, the OAE received a reply with the boxed marked for "Not Known at

Address Given" for the 3505 Gates Court, Morris Plains, New Jersey 07950 address.

On September 13, 2012, the OAE made notice by publication in the Bergen County The Record and the Morris County Daily Record and, on September 17, 2012, in The New Jersey Law Journal.

As of the date of the certification of the record, November 2, 2012, respondent had not filed an answer to the ethics complaint.

Respondent received a three-month suspension, effective February 14, 2011, that was stayed until March 9, 2011. Subsequently, he was suspended for an additional three months, effective June 10, 2011. Respondent did not apply for reinstatement and remains suspended to date.

The Court's orders filed January 20, 2011 and June 29, 2011, ordered respondent to comply with R. 1:20-20, dealing with suspended attorneys. The rule 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.

On January 18, 2012, the OAE sent a letter, by regular and certified mail, to respondent's home and office addresses listed above, requesting that he file the required affidavit of compliance by February 1, 2012.

The certified mail sent to respondent's home address was returned marked "Unclaimed." The certified mail sent to respondent's office was returned marked "Attempted - Not Known Unable to Forward." The regular mail sent to both addresses was not returned. Respondent neither answered the letter, nor filed the required affidavit.

According to the complaint, respondent willfully violated the Court's order and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of his suspension and delivering files to his clients. As indicated previously, the complaint charged respondent with having violated 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).

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.

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 Swidler, 210 N.J. 612 (2012) (three-month suspension for attorney who failed to comply with R. 1:20-20 after two suspensions, even after the OAE requested him to do so; it was the attorney's fourth default; his prior three defaults resulted in a reprimand, a three-month suspension, and a six-month suspension); 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; prior 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's disciplinary history consisted of 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's failure to cooperate with disciplinary authorities included his failure to abide by his promise to the OAE to complete the affidavit); In re King, 181 N.J. 349 (2004) (one-year suspension for attorney whose ethics history consisted of 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: an admonition, a reprimand, a one-year suspension, a censure, and another one-year suspension, also by default).

We find that the circumstances here are similar to those in the Wood matter. Wood received a one-year suspension, his ethics history included an admonition, a reprimand, a censure, and two three-month suspensions. Two of the matters proceeded as defaults. Respondent's ethics history included two reprimands and two three-month suspensions. This is his second default. While respondent's history is not as extensive as Wood's, respondent's 2011 three-month suspension was of a nature that underscored his disregard for the judicial and ethics process. We, therefore, determine that, like Wood, respondent deserves a one-year suspension.

Member Clark voted to impose a six-month suspension. Member Gallipoli voted to disbar respondent. Chair Pashman and Member Wissinger voted to impose an indeterminate suspension.

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Hamdi M. Rifai  
Docket No. DRB 12-366

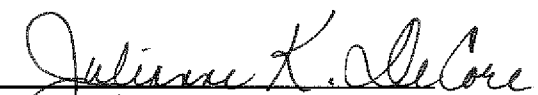
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Decided: March 19, 2013

Disposition: One-year suspension

<b>Members</b>	Disbar	One-year Suspension	Six-month Suspension	Indeterminate Suspension	Did not participate
Pashman				X	
Frost		X			
Baugh		X			
Clark			X		
Doremus		X			
Gallipoli	X				
Wissinger				X	
Yamner		X			
Zmirich		X			
<b>Total:</b>	1	5	1	2	

  
Julianne K. DeCore  
Chief Counsel