

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-352  
District Docket No. XIV-2011-0429E

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IN THE MATTER OF :  
SAMUEL RAK :  
AN ATTORNEY AT LAW :  
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Decision

Decided: April 12, 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 a three-month suspension. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1985. On April 8, 2011, in a default matter, respondent received a three-month suspension for misconduct in two matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients and failure to cooperate with ethics authorities. In re Rak, 205 N.J. 261 (2011). He remains suspended to date.

On September 8, 2010, in a default matter, respondent was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with an ethics investigation. In re Rak, 203 N.J. 381 (2010).

Service of process was proper in this matter. On June 13, 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, 14 Hamilton Street, Montvale, New Jersey 07645 and 135 Fort Lee Road, Leonia, New Jersey 07605, by regular and certified mail.

The certified mail sent to 14 Hamilton Street was returned marked "Unclaimed." The regular mail was not returned.

The certified mail sent to 135 Fort Lee Road was returned marked "Unclaimed." The regular mail was not returned.

On September 7, 2012, the OAE sent a second letter to respondent, by regular and certified mail, to both of the above addresses. 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 charge of a willful violation of RPC 8.1(b).

The certified mail green return receipt for the mail sent to 14 Hamilton Street, signed by respondent, was returned to the OAE indicating delivery on September 15, 2012. The regular mail was not returned.

The certified mail sent to 135 Fort Lee Road was returned marked "Unclaimed." The regular mail was not returned.

On September 12, 2012, an OAE Deputy Ethics Counsel met with respondent at the OAE offices. Respondent, who was aware of the complaint, was given an extension until September 28, 21012 to file an answer. He did not do so.

As of the date of the certification of the record, October 15, 2012, respondent had not filed an answer.

The Court's March 9, 2012 order of suspension required respondent to comply with R. 1:20-20, dealing with suspended

attorneys. That 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 the affidavit.

On October 14, 2011, 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 October 28, 2011.

The certified mail green return receipt for the mail sent to respondent's home address, signed by respondent, was returned to the OAE indicating delivery on October 19, 2011. The regular mail was not returned.

The certified mail sent to respondent's office address was returned to the OAE indicating delivery on October 18, 2011. The signature of the person accepting delivery is illegible. The regular mail was not returned.

Respondent did not answer the letter or file the required affidavit.

On April 18, 2012, the OAE visited respondent's office address of 135 Fort Lee Road, Leonia, New Jersey 07605. Respondent was not in the office at the time. However, his office assistant was present. Copies of the OAE's October 4, 2011 correspondence, the suspension order, and R. 1:20-20, along with OAE contact information, were left with respondent's office assistant along with a verbal message for respondent to contact the OAE.

Respondent did not contact the OAE regarding the matter nor file the required affidavit.

According to the complaint, respondent willfully violated the Court's order and failed to take the steps required of all suspended 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)(1).

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 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, 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 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 resulting 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 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 the Board, including failing to abide by



his promise to the OAE to complete the affidavit; the Board 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).

We conclude that this case, without more, is somewhat more serious than Sirkin (censure) and more analagous to Swidler (three-month suspension), if slightly less serious. In Sirkin, a default, the attorney received a censure for failing to file the required affidavit, after having received a prior three-month suspension and a visit from the OAE to prompt him to action.

Here, respondent has a prior three-month suspension and a prior reprimand, both having come to us as defaults. Respondent, too, received a visit from the OAE, to no avail.

In Swidler, in the attorney's fourth default in five years, he failed to file the required affidavit after two prior suspensions. Swidler's three prior defaults resulted in a reprimand, a three-month suspension, and a six-month suspension.

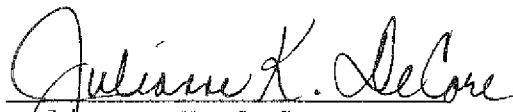
In aggravation, however, this is respondent's third straight default in fewer than three years. It took Swidler a full five years to default a fourth time. Like Swidler, respondent was visited by the OAE in an attempt to prompt him to action, but he ignored the opportunity to conform his behavior. We determine that a three-month suspension, as in Swidler, is the appropriate sanction here.

We further determine that respondent should not be reinstated to the practice of law until all pending ethics matters against him are resolved.

Member Zmirich voted for a six-month suspension. Member Gallipoli voted for disbarment, believing that an attorney who disobeys a court order and a court rule, in such circumstances, should be disbarred.

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 Samuel Rak  
Docket No. DRB 12-352

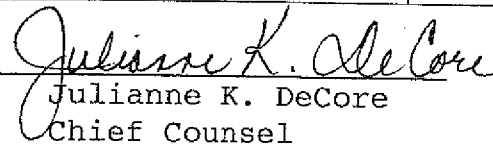
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Decided: April 12, 2013

Disposition: Three-month suspension

<i>Members</i>	Three-month Suspension	Six-month Suspension	Disbar	Disqualified	Did not participate
Pashman	X				
Frost	X				
Baugh	X				
Clark	X				
Doremus	X				
Gallipoli			X		
Wissinger	X				
Yamner	X				
Zmirich		X			
Total:	7	1	1		

  
Julianne K. DeCore  
Chief Counsel