

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-367
District Docket No. XIV-2011-0426E

IN THE MATTER OF
SHARON S. TERRELL
AN ATTORNEY AT LAW

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Decision

Decided: April 18, 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) for her failure to file the required R. 1:20-20
affidavit, following her temporary suspension. The OAE urged us
to impose either a censure or a three-month suspension. We
determine to impose a censure.

Respondent was admitted the New Jersey bar in 1986. She was also admitted to practice in North Carolina and Pennsylvania, in 1975 and 1983, respectively. She has been temporarily suspended, since October 27, 2010, for failing to satisfy a fee arbitration award and to pay a \$500 sanction to the Disciplinary Oversight Committee (DOC). In re Terrell, 204 N.J. 3 (2010).

Service of process was proper. In July 2012, the OAE sent a copy of the complaint by certified and regular mail to respondent's last known address listed in the attorney registration records, 521 Covered Bridge Road, Cherry Hill, New Jersey 08034.¹ The certified mail was returned as "Unclaimed." The regular mail was not returned.

By letter dated September 10, 2012, the OAE advised respondent that, if she 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

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

failure to file an answer. The letter was sent by certified and regular mail to the Cherry Hill address. The certified mail was returned as "Unclaimed." The regular mail was not returned. Respondent did not file an answer.

The allegations of the complaint are as follows:

The Supreme Court ordered respondent temporarily suspended from the practice of law, effective October 27, 2010, until she satisfied a fee arbitration award and paid a sanction of \$500 to the DOC. 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 Court order and the mandate of the rule.

By letter dated October 11, 2011, the OAE advised respondent of her responsibility to file the R. 1:20-20 affidavit and of the possible consequences, if she 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 Cherry Hill 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.

As of the date of the complaint, July 2, 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 Battaqlia, 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 Warqo, 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 noted that respondent failed to file the R. 1:20-20 affidavit, after the OAE's request, and allowed the matter to proceed as a default.

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.

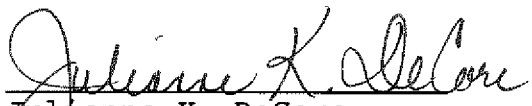
As to whether more serious discipline is mandated, respondent's lack of a disciplinary history distinguishes this case from those cases where three-month suspensions were imposed on attorneys who had more serious disciplinary records, either in number or degree: Garcia (fifteen-month suspension), Berkman

(nine-month suspension), Girdler ((public) reprimand, private reprimand, and a three-month suspension), Battaglia (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, that suspension did not stem from disciplinary proceedings. A censure is, thus, sufficient discipline in this case.

Member Gallipoli would disbar respondent, believing that an attorney who, in such circumstances, disobeys a court order and a court rule 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


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Sharon S. Terrell
Docket No. DRB 12-367

Decided: April 18, 2013

Disposition: Censure

<i>Members</i>	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli	X					
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:	1	8				



Julianne K. DeCore
Chief Counsel