

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 13-397  
District Docket No. XIV-2012-0473E

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IN THE MATTER OF  
ANDREW J. BREKUS  
AN ATTORNEY AT LAW

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Decision

Decided: May 29, 2014

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 cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for his failure to comply with the New Jersey Supreme Court's order requiring him to file an affidavit of compliance with R. 1:20-20, following his October 5, 2011 suspension from the practice of law.

The OAE recommended at least a two-year prospective suspension. For the reasons expressed below, we determine that a three-year prospective suspension is warranted.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1986. His disciplinary record in New Jersey is egregious: an admonition, a reprimand, a censure, two one-year suspensions, and a two-year suspension.

In 2000, respondent was admonished for failure to advise a client about a potential malpractice claim against him and to advise the client to consult with independent counsel about the claim, violations of RPC 1.8(a) and RPC 1.8(h). In the Matter of Andrew J. Brekus, DRB 00-187 (September 25, 2000).

In 2006, respondent was reprimanded for failure to comply with our directive, stemming from his earlier admonition, that he fully satisfy the terms of an oral agreement with his client to settle a potential malpractice claim against him; failure to provide proof of that payment to the OAE, when finally paid; and failure to reply to the grievance and to turn over the client's file to disciplinary authorities, thereby violating RPC 8.4(c) and RPC 8.1(b). In re Brekus, 186 N.J. 409 (2006).

In 2009, on a motion for reciprocal discipline, respondent was suspended for one year, effective September 1, 2008, for gross neglect; lack of diligence; failure to keep a client

reasonably informed about the status of the matter or to comply with the client's reasonable requests for information; failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation; failure to provide a client with a writing setting forth the basis or rate of the fee; commingling personal and trust funds; failure to withdraw from the representation if the representation will result in violation of the Rules of Professional Conduct; failure to protect a client's interests upon termination of the representation, by not promptly releasing a client file to a new attorney; unauthorized practice of law (practicing while ineligible); making false or misleading communications about the lawyer's services; misrepresentation of his status as an attorney in good standing in New Jersey and misrepresentations about the status of a case; and conduct prejudicial to the administration of justice for being held in contempt for failure to appear for depositions or to comply with discovery requests in a malpractice case against him. In addition to mishandling two client matters, respondent violated a number of the Pennsylvania Rules of Disciplinary Enforcement, including failing to notify clients and others of his transfer to inactive status, in Pennsylvania. In re Brekus, 199 N.J. 511 (2009).

On the same day that respondent was suspended for one year, the Court issued an order censuring him, after he stipulated to engaging in gross neglect, lack of diligence, and failure to communicate with the client, in an action arising out of a 1992 automobile accident. Specifically, respondent filed a lawsuit on behalf of a minor, her parents, and her brother, and received settlement proceeds for the parents and the brother. In 2000, the minor should have received her portion of the settlement, which was to have been placed with the county surrogate, until she reached the age of majority. Her case, however, was dismissed for lack of prosecution, no escrow account was ever established for her with the surrogate's office, and respondent did not communicate with her. In assessing the suitable degree of discipline, we considered that progressive discipline was not appropriate because respondent's misconduct in that matter had occurred in-between his first two ethics matters, for which he had already been disciplined. In aggravation, we took into account that the client never received any monies from her settlement. In re Brekus, 199 N.J. 510 (2009).

In 2010, respondent received another one-year suspension, effective July 19, 2010. In a default matter, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with the client, misrepresentations to the client

that he was working on the matters, failure to turn over the file to the client, pattern of neglect, and failure to cooperate with the district ethics committee's investigation. In a workers' compensation and a personal injury matter that arose out of the client's fall from a roof, respondent did not file a complaint to toll the statute of limitations for the personal injury claim and never filed a workers' compensation petition. In re Brekus, 202 N.J. 333 (2010).

In 2011, respondent was suspended for two years, in another default matter, for failing to comply with the Court's order of suspension requiring him to file an affidavit of compliance with R. 1:20-20, following his 2009 suspension. In re Brekus, 208 N.J. 341 (2011).<sup>1</sup>

Respondent never applied for reinstatement from his 2009 suspension and remains suspended to date.

Service of process was proper in this matter. On June 18, 2013, the OAE forwarded a copy of the complaint, by regular and certified mail, to respondent's last known home address listed in the attorney registration records. Although the certified mail was returned marked "Not Deliverable as Addressed Unable to

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<sup>1</sup> The complaint filed by the OAE in the 2010 matter alleged a failure to file the required R. 1:20-20 affidavit only with regard to the 2009 suspension, not the 2010 suspension.

Forward," the United States Postal Service's (USPS) tracking website showed that the certified mail was unclaimed. The regular mail was not returned.

On July 26, 2013, the OAE sent a letter to the same address, by regular and certified mail, advising respondent that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to allege a willful violation of RPC 8.1(b). The certified mail receipt, indicating delivery on July 29, 2013, was signed by Drew Brekus. The regular mail was not returned.

In an August 1, 2013 telephone conversation with the OAE, respondent indicated that he intended to file an affidavit in compliance with R. 1:20-20. The OAE extended the time to August 15, 2013, to allow respondent to do so and to answer the complaint.

As of the date of the certification of the record, December 5, 2003, respondent had filed neither the affidavit nor an answer to the complaint.

The charges in this matter stemmed from the following conduct.

On October 5, 2011, the Court suspended respondent for two years (for an R. 1:20-20 violation). The Court's order, filed on October 5, 2011, directed respondent to comply with R. 1:20-20, which requires suspended attorneys to file with the OAE Director, within thirty days 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 the rule and the Court's order.<sup>2</sup> Respondent failed to comply with the Court's directive.

By letter dated January 14, 2013, sent by regular and certified mail to respondent's home and office addresses, the OAE reminded respondent of his obligation to file the required affidavit and requested that he do so by January 28, 2013. The certified mail receipt for the home address, signed by "M Giuda," showed that the letter was delivered on January 18, 2013. The regular mail sent to that address was not returned.

The USPS website showed that the certified mail sent to respondent's office address was undeliverable as addressed and that it would be returned to the OAE. However, as of the date of the certification of the record, December 5, 2013, neither the

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<sup>2</sup> The complaint mistakenly listed the filed date as July 19, 2011.

certified nor the regular mail sent to respondent's office address was returned to the OAE.

Respondent neither answered the OAE's letter nor filed the required R. 1:20-20 affidavit.

The complaint charged that respondent willfully violated the 2011 Court order and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing clients with their files, violations of RPC 8.1(b) and RPC 8.4(d).

Based on respondent's failure to reply to the OAE's request to file the required affidavit and to file a verified answer to the complaint, his serious ethics history, and the fact that this is his third default, the OAE recommended no less than a two-year suspension, the same discipline that the Court imposed on him, in 2011, for the same violation.

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).

As indicated above, R. 1:20-20(b)(15) requires a suspended attorney to file an affidavit of compliance with the rule within thirty days of the order of suspension. That requirement is also



clearly stated in the Court's orders of suspension or disbarment. In the absence of an extension by the Director of the OAE, an attorney's 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 for an attorney's failure to file an R. 1:20-20 affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Examples of aggravating factors include the attorney's failure to comply with 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. All three aggravating factors are present in this case.

Since Girdler, discipline greater than a reprimand has been imposed in the following cases, most of which proceeded as defaults: In re Fox, 210 N.J. 255 (2012) (censure following a temporary suspension); In re Sirkin, 208 N.J. 432 (2011) (censure after the attorney received a three-month suspension); In re Garcia, 205 N.J. 314 (2011) (three-month suspension for the 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 Battaqlia, 182 N.J. 590

(2006) (non-default case; 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 Rosanelli, 208 N.J. 359 (2011) (six-month suspension after a temporary suspension; the attorney ignored the OAE's specific request that he submit the affidavit; the attorney had a disciplinary history consisting of a three-month suspension in a default matter and a six-month suspension); 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 Wargo, 196 N.J. 542 (2009) (one-year suspension for attorney whose ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and a one-year suspension for the combined misconduct in two separate matters; all disciplinary matters proceeded on a default basis); In re Wood, 193 N.J. 487 (2008) (one-year suspension following a three-month suspension; the attorney also failed to comply with the OAE's request that he file the R. 1:20-20 affidavit; 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 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, supra, 208 N.J. 341 (two-year suspension imposed on attorney whose ethics history included an admonition, a reprimand, a censure, and two one-year suspensions).

As indicated earlier, the OAE's position was that nothing less than a two-year suspension is appropriate in this case. We agree and determine that respondent's significant disciplinary record, as well as his continued defiance of the ethics process and pattern of disregarding the Court's orders, warrant a three-year suspension.

Member Gallipoli voted to disbar respondent and filed a separate dissent. Members Doremus and Zmirich concur with Member Gallipoli's recommendation for disbarment based on respondent's egregious disciplinary record.

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  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Andrew J. Brekus  
Docket No. DRB 13-397


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Decided: May 29, 2014

Disposition: Three-year prospective suspension

<i>Members</i>	Disbar	Three-year Prospective Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus	X					
Gallipoli	X					
Hoberman		X				
Singer		X				
Yamner		x				
Zmirich	X					
Total:	3	6				

  
Ellen A. Brodsky  
Chief Counsel