

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 10-146  
District Docket No. XIV-2008-356E

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IN THE MATTER OF  
NEAL SHARMA  
AN ATTORNEY AT LAW

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Decision

Decided: July 9, 2010

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

This matter came before us on a certification of default filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f). It arises out of respondent's failure to file an affidavit of compliance with R. 1:20-20, following a three-month suspension imposed on him on February 26, 2008.

The OAE seeks a three-month suspension. In light of respondent's disciplinary history and the default nature of this

matter, we determine to impose a six-month suspension for respondent's violations of RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1992. It is not clear whether or where, at the relevant times, he maintained an office for the practice of law. In the disciplinary matter that led to his suspension, his law office was in Philadelphia. In this matter, the record indicates that he has an office in Pennington, New Jersey.

In addition to being suspended in 2008, respondent was reprimanded and censured, on April 26, 2006, for misconduct in two default matters. The reprimand matter involved respondent's failure to cooperate with disciplinary authorities. In re Sharma, 2006 Lexis 491 (N.J. S. Ct.). There, even though the grievance was dismissed for lack of evidence, respondent was disciplined because, during the investigation, he failed to reply to the DEC's inquiries regarding the grievance and also failed to comply with the DEC's request for a copy of a certain document. The censure matter involved gross neglect, lack of diligence, failure to communicate with the client, and

misrepresentation of the status of the matter to the client. In re Sharma, 186 N.J. 411 (2006).

Respondent's three-month suspension in 2008 resulted from his misconduct in two matters involving lack of diligence, failure to communicate with the client, practicing law while ineligible, and failure to maintain a bona fide office. In re Sharma, 193 N.J. 599 (2008). Respondent remains suspended to date.

Respondent was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection during the following periods: September 24 to October 10, 2001; September 27, 2004 to December 14, 2005; September 25, 2006 to February 1, 2007; and September 27, 2007 until present.

Service of process was proper in this matter. On August 11, 2009, the OAE transmitted a copy of the complaint to four addresses attributed to respondent: 2 Cromwell Court, Ewing, New Jersey 08628; Post Office Box 7425, Ewing, New Jersey 08628; Post Office Box 998, Pennington, New Jersey 08534-0998; and 10 Reeves Avenue, Suite 2, Hamilton Township, New Jersey 08610. The mailing to each address was sent via regular and certified mail, return receipt requested. The regular mail to Cromwell

Court in Ewing was returned as "Attempted - Not known." The certified mail was returned as "Unclaimed." Both letters sent to the Hamilton Township address were returned as "Not Deliverable as Addressed Unable to Forward."

The certified mail to the other Ewing address (P.O. Box 7425) was returned with the hand-written notion "PO Box Closed." The regular mail was not returned.

On August 26, 2009, respondent signed for the certified letter mailed to the Pennington address. The letter sent via regular mail was not returned.

On October 1, 2009, the OAE sent a letter to respondent at the Pennington address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction.

On October 8, 2009, respondent signed for the certified letter. The letter sent via regular mail was not returned.

As of April 20, 2010, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

According to the single-count complaint, prior to respondent's suspension in February 2008, he maintained a law office in Hamilton Township. The February 2008 order required him to comply with R. 1:20-20, which obligated him, among other things, to file with the OAE Director "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 did not comply with that rule.

On September 16, 2008, the OAE wrote to respondent, informing him that he had not complied with the Court order and the rule and directing him to do so immediately. The letter was sent via regular and certified mail, return receipt requested, to the two Ewing addresses and the address in Hamilton Township.

Respondent signed for the letter sent to the Ewing post office box address, on September 23, 2008. The letter sent via regular mail was not returned. All of the letters sent to the other addresses were returned as "undeliverable."

Respondent did not reply to the OAE's letter or contact the OAE's office. As of August 7, 2009, he had not filed the affidavit of compliance required by R. 1:20-20.

Respondent was charged with failing to cooperate with disciplinary authorities (RPC 8.1(b)) and engaging in conduct prejudicial to the administration of justice (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 an 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 an affidavit of compliance within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). Thus, respondent's failure to file the affidavit is a per se violation of RPC 8.1(b) and RPC 8.4(d).

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 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. Girdler received a three-month suspension. In re Girdler, 179 N.J. 227 (2004) (in a default matter, attorney failed to produce the affidavit after prodding by the OAE and after agreeing to do so; the attorney also failed to file an answer to the ethics complaint; the attorney's disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter). See also In re Battaglia, 182 N.J. 590 (2006) (three-month suspension imposed in a non-default matter; the suspension was made retroactive to the date that the attorney filed the affidavit of compliance; the attorney's ethics record included two concurrent three-month suspensions and a temporary suspension); In re Raines, 181 N.J. 537 (2004) (three-month suspension for attorney whose 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 Horowitz, 188 N.J. 283 (2006) (on a certified record, a six-month suspension was appropriate for an attorney who failed to comply with R. 1:20-20, where the attorney's ethics history consisted of a three-month suspension and a pending one-year suspension in two default matters; ultimately, the attorney was disbarred on a motion for reciprocal discipline from New York); In re Wood, 193 N.J. 487 (2008) (one-year suspension; attorney failed to file R. 1:20-20 affidavit after 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; the attorney's disciplinary history consisted of an admonition and two concurrent six-month suspensions, one of which was a default; the attorney also failed to abide by his promise to the OAE that he would file the affidavit; need for progressive need noted); In re King, 181 N.J. 349 (2004) (one-year suspension; in a default, the Court imposed a one-year suspension on an attorney with an extensive ethics history comprised 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; the attorney also ignored the OAE's attempts to have her file an affidavit of compliance); and In re Mandle, 180 N.J. 158 (2004) (in a default matter, one-year suspension for attorney who already had amassed three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions; the attorney did not appear before the Supreme Court on its order show cause).

Respondent's conduct warrants more than a reprimand, as aggravating factors are present in this case. First, he failed to comply with the OAE's specific request that he file the affidavit. Second, he has a disciplinary history consisting of a reprimand, a censure, and a three-month suspension. Third, in one of the two default matters, respondent also refused to file a reply to a grievance and ignored the OAE's request that he produce a certain document. Fourth, he has defaulted in this matter. These factors justify enhancing the discipline from the threshold reprimand to a six-month 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 Neal Sharma  
Docket No. DRB 10-146

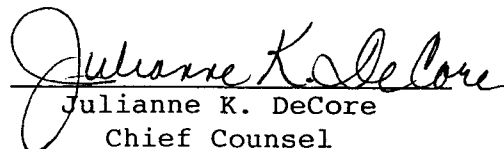
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Decided: July 9, 2010

Disposition: Six-month Suspension

Members	Disbar	Six-month Suspension	Admonition	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

  
Julianne K. DeCore  
Chief Counsel