

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-143
District Docket No. XIV-2012-0486E

IN THE MATTER OF :

STEPHEN DOUGLAS KINNARD :

AN ATTORNEY AT LAW :

Decision

Decided: November 18, 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 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 his temporary suspension from the practice of law.

The OAE filed a May 12, 2014 memorandum in lieu of a formal brief, recommending the imposition of either a censure or a three-month suspension. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1985. On April 17, 2008, he received an admonition for practicing law while ineligible to do so for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). In the Matter of Stephen Douglas Kinnard, DRB 07-410 (April 17, 2008).

Effective February 6, 2012, respondent was temporarily suspended from the practice of law for failure to pay the disciplinary costs associated with the matter for which he was admonished. In re Kinnard, 209 N.J. 1 (2012). He remains suspended to date.

Service of process was proper in this matter. On June 21, 2013, the OAE sent a copy of the complaint, by both certified and regular mail, to respondent's last known home address, listed in the attorney registration records. The certified mail green card was signed by a "Lippincott." The regular mail was not returned.

On July 26, 2013, the OAE sent a second letter to the same home address, by both certified and regular mail, advising

respondent that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of sanction, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Again, the certified mail card was signed by "Lippincott." The regular mail was not returned.

On August 7, 2013, respondent "faxed" a letter to the OAE, requesting a seven-day extension of time to file an answer. The OAE gave respondent until August 16, 2013 to file the answer.

As of the date of the certification of the record, respondent had not filed the R. 1:20-20 affidavit or an answer to the ethics complaint.

The 2012 Court order that temporarily suspended respondent required him to comply with R. 1:20-20, which mandates, among other things, that a suspended 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 do so.

The complaint cited the OAE's additional efforts to notify respondent of his responsibility to file the affidavit. On January 14, 2013, the OAE sent respondent a letter to his home address, listed in the attorney registration records, advising him of his obligation to file the R. 1:20-20 affidavit and requesting that he do so by January 28, 2013. The letter was sent by regular and certified mail. The certified mail receipt was signed by "Lippincott." The regular mail was not returned.

As mentioned previously, respondent failed to file the required affidavit.

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).

Despite respondent's obligation to file an affidavit in full compliance with R. 1:20-20, he failed to do so. Under R. 1:20-20(c), failure to file the required affidavit within the prescribed time is a 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 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.

Since Girdler, the discipline imposed on attorneys who have failed to comply with R. 1:20-20 has ranged from a censure to a two-year suspension. See, e.g., In re Terrell, 214 N.J. 44 (2013) (in a default matter, censure imposed on attorney who failed to file the required R. 1:20-20 affidavit, following a temporary suspension; no history of final discipline); In re Fox, 210 N.J. 255 (2012) (censure in a default matter for an attorney who failed to file the R. 1:20-20 affidavit after a temporary suspension; no history of final discipline); In re Saint-Cyr, 210 N.J. 254 (2012) (censure in a default matter for an attorney who failed to file the R. 1:20-20 affidavit after a temporary suspension; no history of final discipline); In re Sirkin, 208 N.J. 432 (2011) (censure in a default matter for attorney who did not file the required affidavit following a three-month suspension from the practice of law; prior three-

month suspension); In re Gahles, 205 N.J. 471 (2011) (censure in a default matter for attorney who did not file the required affidavit following a temporary suspension for failure to comply with a fee arbitration determination; prior reprimand and admonition); 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; her disciplinary history consisted of a fifteen-month suspension); 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 history 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 Girdler, *supra*, 179 N.J. 227 (in a default matter, three-month suspension for attorney who failed to produce the affidavit after prodding by the OAE and after agreeing to do so; the attorney's disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter); 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 McClure, 182 N.J. 312 (2005) (one-year suspension for attorney whose disciplinary history consisted of an admonition and two concurrent six-month suspensions, one of which was a default; the attorney failed to abide by his promise to the OAE to complete the affidavit; the Board noted the need for progressive discipline); In re King, 181 N.J. 349 (2004) (in a default, one-year suspension imposed on attorney with an extensive ethics history consisting 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 ignored the OAE's attempts to have her file an affidavit of compliance; she remained suspended since 1998, the date of her temporary suspension); and In re Brekus, 208 N.J. 341 (2011) (in a default, two-year suspension imposed on attorney with 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).

Here, respondent ignored the OAE's request that he comply with R. 1:20-20, did not answer the complaint, and has an admonition and a temporary suspension on his ethics record. Guided by the above-cited precedent, we conclude that discipline more severe than a censure would be excessive in this case. Terrell, Fox, Saint-Cyr, Sirkin, and Gahles all received a censure. Like respondent, they defaulted and did not have a serious ethics history.

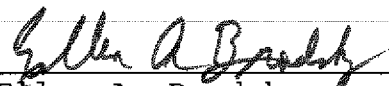
By contrast, attorneys who received three-month suspensions had a more significant ethics history than respondent's. Swidler had a reprimand, a three-month suspension, and a six-month suspension (Swidler defaulted in all four matters); Garcia had a

fifteen-month suspension; Battaglia had two concurrent three-month suspensions and a temporary suspension; Raines had a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension; and Girdler had a private reprimand, a public reprimand, and a three-month suspension. Even Gahles, who received only a censure, had an ethics history more serious than respondent's: an admonition, a reprimand, and a temporary suspension.

Because respondent has only an admonition and a temporary suspension on his ethics record, we determine that a censure is adequate discipline in this case.

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


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			9			



Ellen A. Brodsky
Chief Counsel