

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-115
District Docket Nos. XIV-2011-
0672E and XIV-2012-0434E

IN THE MATTER OF
TERENCE SEAN BRADY
AN ATTORNEY AT LAW

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Decision

Argued: July 17, 2014

Decided: October 27, 2014

Jason Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent, through counsel, waived oral argument.

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

This matter was before us on a recommendation for discipline (one-year retroactive suspension), filed by the District IIIB Ethics Committee (DEC). It encompasses two complaints against respondent, which have been consolidated for the purpose of discipline. In Docket No. XIV-2011-0672E, the one-count complaint charged respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice)

for failure to file a R. 1:20-20 affidavit, following a temporary suspension from the practice of law. In Docket No. XIV-2012-0434E, the two-count complaint charged respondent with a violation of RPC 5.5(a)(1) and R. 1:20-16 (unauthorized practice of law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice), for representing clients during his temporary suspension.

The Office of Attorney Ethics (OAE) recommended a one-year retroactive suspension, without suggesting its effective date. For the reasons set forth below, we determine that a one-year prospective suspension is the appropriate form of discipline.

Respondent was admitted to the New Jersey bar in 1988. On June 6, 2011, he was temporarily suspended for failure to cooperate with disciplinary authorities. In re Brady, 206 N.J. 136 (2011). On September 20, 2012, he was suspended for three months for gross neglect, lack of diligence, failure to communicate with clients, failure to protect a client's interests on termination of the representation, misrepresentation, and a pattern of neglect. In re Brady, 213 N.J. 101 (2012).

Respondent remains suspended to date. On January 11, 2013, he applied for indigency status, in order to defer the \$750 reinstatement fee, but has not yet applied for reinstatement.

On November 26, 2013, a formal hearing was held on both of the aforementioned complaints. At the hearing, the parties entered into factual and legal stipulations. Respondent's testimony was limited to mitigating circumstances.

DOCKET NO. XIV-2011-0672E

The Supreme Court order that temporarily suspended respondent, effective June 6, 2011, directed him to comply with the requirements of R. 1:20-20. Respondent failed to do so.

On January 18, 2012, the OAE sent a letter to respondent's home address listed with the New Jersey Lawyers' Fund for Client Protection, reminding him of his responsibility to file the affidavit of compliance with R. 1:20-20. The letter was sent by regular and certified mail. The OAE requested a response by February 1, 2012. The certified mail envelope was returned to the OAE, marked "unclaimed". The regular mail was not returned. Respondent neither answered the letter, nor filed the required affidavit.

Respondent stipulated that he willfully violated the Supreme Court's order and R. 1:20-20, by failing to take the

steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of his suspension and returning client files.

DOCKET NO. XIV-2012-0434E

On December 6, 2010, the Honorable Ronald Bookbinder, A.J.S.C., ordered the appointment of a temporary attorney-trustee in connection with respondent's law practice, pursuant to R. 1:20-19(a)(2). On February 4, 2011, Judge Bookbinder issued an order dissolving the temporary attorney-trusteeship. On February 8, 2011, Judge Bookbinder, with the consent of respondent, entered an order restraining respondent from practicing law. As mentioned above, on June 6, 2011, the Supreme Court temporarily suspended respondent from the practice of law.

Between the dates of Judge Bookbinder's order and the Supreme Court's order, respondent submitted to the Cherry Hill Municipal Court Administrator a letter of representation and request for discovery on behalf of his client S.G. Respondent also entered his client's not-guilty plea in that matter. Also between the dates of the two orders, respondent submitted a letter of representation and request for discovery to the Springfield Township Municipal Court, on behalf of client S.G.

He also entered a not-guilty plea on behalf of S.G. in two municipal matters. He failed to disclose to S.G. that a court order prohibited him from practicing law.

On January 31, 2012, after the Supreme Court's order of temporary suspension, respondent submitted to the Trenton Municipal Court a letter of representation, entry of plea, and request for discovery, on behalf of his client A.C. In a March 6, 2013 interview with the OAE, respondent admitted that he had appeared in court on behalf of A.C., on January 31, February 28, and May 25, 2012.

Respondent stipulated knowing that he was temporarily suspended, at the time that he represented A.C. He also stipulated that, by way of his letter of representation, he misrepresented to the courts his status as an attorney.

At the hearing, respondent testified that he was homeless, was receiving public assistance, and had no real income, since December of 2010. The county was paying for his residence at a local motel. He also testified that, after he was diagnosed with HIV, in December 2008, his employment was terminated. He collected unemployment benefits for six months, worked for a local attorney, and then tried to open his own practice. Due to the poor economy, he did not succeed, causing him to grow more depressed. He added that he suffers from a seizure disorder.

According to respondent, he is currently being treated by two therapists and is taking medication (Zoloft) for depression. His future goals are to make enough money to support himself and to help those who do not have access to legal assistance.

Respondent's explanation for failing to notify his clients that he was suspended from the practice of law was that his files were turned over to the trustee and that he was under the impression that the trustee was going to contact his clients and advise them of his suspension.

Respondent further proffered that S.G., one of the clients that he represented in municipal court, had been his next-door neighbor for over ten years, that he did not charge S.G. a legal fee, and that the purpose of the representation was to save S.G. from having to pay a fee to an attorney and to secure the best possible resolution of the cases.

As to A.C.'s representation, respondent stated that he had not been able to practice law for over a year, that his wife had filed for divorce, and that he had no income to pay for his medications. He told the hearing panel that he had taken the case as a desperate measure to offset his severe financial distress.

The DEC noted that, although respondent knowingly failed to reply to a lawful demand for information from a disciplinary

authority, he cooperated with the OAE, during the investigation. It also considered that respondent suffers from several significant mental and physical health issues and was beset by personal problems and economic calamities:

In aggravation, the DEC noted that, in Docket No. XIV-2011-0672E, respondent knowingly ignored ethics authorities' lawful demand for information. The DEC also noted that respondent has an ethics history.

The DEC recommended a one-year suspension, retroactive to the date of the hearing, November 26, 2013.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In Docket No. XIV-2011-0672E, respondent stipulated that he failed to comply with the requirements of R. 1:20-20, despite a reminder to do so from the OAE. Failure to comply with R. 1:20-20 constitutes a violation of RPC 8.1(b) and RPC 8.4(d). R. 1:20-20(c).

In Docket No. XIV-2012-0434E, respondent stipulated that he violated Judge Bookbinder's and the Supreme Court's orders by representing two clients during a period of suspension and misrepresenting to the clients and the courts that he was an attorney in good standing. Specifically, respondent violated

Judge Bookbinder's December 6, 2010 and February 8, 2014 orders by representing S.G. in two separate municipal court matters. He also represented A.C. after the Supreme Court's order of June 6, 2011, temporarily suspending him from the practice of law. Further, he never informed his clients of the prohibition against his practice of law in New Jersey and misrepresented his status to the courts before which he appeared. Respondent's conduct in this matter violated RPC 5.5(a)(1), RPC 8.4(c), and RPC 8.4(d).

The threshold measure of discipline to be imposed for a suspended attorney's failure to comply with R. 1:20-20 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. In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). 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, the attorney failed to produce the affidavit of compliance in accordance with that rule, even though he had agreed 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.

After Girdler, discipline greater than a reprimand was imposed in the following cases: In re Terrell, 214 N.J. 44 (2013) (in a default matter, censure imposed on attorney who failed to file the R. 1:20-20 affidavit); In re Fox, 210 N.J. 255 (2012) (in a default matter, censure imposed on attorney who failed to file the R. 1:20-20 affidavit of compliance following a temporary suspension); In re Saint-Cyr, 210 N.J. 254 (2012) (in a default matter, censure imposed on attorney who failed to file the R. 1:20-20 affidavit following a temporary suspension); In re Sirkin, 208 N.J. 432 (2011) (in a default matter, censure imposed on attorney who failed to file the R. 1:20-20 affidavit following a three-month suspension); In re Gahles, 205 N.J. 471 (2011) (in a default matter, censure for an attorney who failed to file the R. 1:20-20 affidavit following a temporary suspension and then again 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; she remained suspended at the time of the default); In re Garcia, 205 N.J. 314 (2011) (in a default matter, 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) (in a default matter, three-month suspension where the 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, which he submitted contemporaneously with his answer to the complaint; 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 failure to file the affidavit of compliance; 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) (in a default matter, 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; disciplinary history consisted of a three-month suspension in a default matter and a six-month suspension); In re Wargo, 196 N.J. 542 (2009) (in a default matter, 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 matter, 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).

If respondent's conduct had been confined to failure to file the required R. 1:20-20 affidavit, the discipline would have been a reprimand. Indeed, an attorney who, like respondent, had a three-month suspension on his record, received a censure, but the censure was premised on the attorney's failure to file an answer in the R. 1:20-20 matter. In re Sirkin, supra, 208 N.J. 432. Unlike Sirkin, respondent did not default here. He filed an answer to the complaint and, in addition, quickly acknowledged his wrongdoing by stipulating the R. 1:20-20 violation. Therefore, discipline lesser than the censure imposed in Sirkin would have been appropriate for respondent's failure to file the R. 1:20-20 affidavit.

Respondent, however, has also practiced law while suspended, a violation that requires at least a suspension, as shown by established precedent. See, e.g., In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented two clients in a lawsuit, and acted as

Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (one-year suspension for performing legal work in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; specifically, although the attorney did not charge a legal fee,

he counseled a client on two occasions and called the other party's lawyer on four occasions; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities); In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension, also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions; there were no factors to consider in mitigation); In

re Wheeler, 163 N.J. 64 (2000) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, a two-year consecutive suspension for practicing while suspended); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court denied her request for a stay of her suspension; the attorney also failed to inform her clients, her adversary and the courts of her suspension, deliberately continued to practice law, misrepresented her status as an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to the Disciplinary Review Board about maintaining a bona fide office, and failed to cooperate with an ethics investigation; prior three-month suspension); In re Walsh, Jr.,

202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while suspended by attending a case conference in which he negotiated a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimand, censure, three-month suspension, and six-month suspension); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, he continued to represent a client in a criminal matter; he also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior

private reprimand, admonition, two three-month suspensions, and two six-month suspensions); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he limit his practice to criminal matters).

The cases in which a suspension of two or more years was imposed involved infractions that were much greater in either number or severity than respondent's, as well as more serious disciplinary histories. The one-year suspension cases involved conduct more analogous to respondent's. In Bowman, the attorney, during a period of suspension, maintained a law office where he met with multiple clients, represented clients in court, and acted as Planning Board solicitor for two

municipalities. Like respondent, Bowman had a prior three-month suspension. Special mitigating circumstances kept the suspension at the one-year level. In Lisa, the attorney appeared before a New York court, while suspended in New Jersey. The New Jersey Supreme Court considered significant personal issues in mitigation, as well as the fact that the attorney did not charge the client, a friend, for the representation. Lisa had a prior admonition and a three-month suspension. Even in Marra, where the attorney was also guilty of substantial recordkeeping violations and had a significant disciplinary record -- a private reprimand, a reprimand, and a three-month suspension -- the attorney received no more than a one-year suspension.

Here, there are significant mitigating factors to weigh. Respondent was diagnosed with a catastrophic illness and other circumstances that led to the dissolution of his marriage, the undoing of his business, and the ultimate collapse of his personal life, including becoming homeless. In at least one of the instances of his practicing while suspended, he acted out of a sense of desperation to provide some financial support for himself.


In light of the foregoing, we determine that a one-year suspension, the discipline imposed in Bowman, Lisa, and Marra,

is also appropriate in this case. We see no compelling reason to make it retroactive, however, as recommended by the DEC and the OAE.

We further determine that, prior to reinstatement, respondent must provide proof of fitness to practice law, as attested by a health practitioner approved by the OAE.

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


In the Matter of Terence S. Brady
Docket No. DRB 14-115

Argued: July 17, 2014

Decided: October 27, 2014

Disposition: One-year prospective suspension

Members	Disbar	One-year Prospective Suspension	Reprimand	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