

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-191
District Docket No. XIV-2013-0322E

IN THE MATTER OF :
MARC Z. PALFY :
AN ATTORNEY AT LAW : Decision

Decided: December 16, 2014

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

This matter is 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 September 27, 2012 and October 26, 2012 temporary suspensions from the practice of law. The OAE recommended either a censure or a three-month suspension. We

determine that a three-month consecutive suspension is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1999. At the relevant time, he maintained a law office in Freehold, New Jersey.

On October 26, 2012, respondent was temporarily suspended for failure to comply with fee arbitration determinations in three matters. In re Palfy, 212 N.J. 331 (2012), In re Palfy, 212 N.J. 332 (2012), and In re Palfy, 212 N.J. 333 (2012). On June 25, 2013, the Court issued another order for respondent's temporary suspension, based on his failure to comply with fee arbitration determinations in two additional matters. In re Palfy, 214 N.J. 110 (2013). Finally, the Court issued yet another order for respondent's temporary suspension, on June 26, 2013, for his failure to cooperate with the OAE in a disciplinary matter. In re Palfy, 214 N.J. 105 (2013).

On November 20, 2014, respondent received a censure for recordkeeping violations and failure to appear at an OAE demand audit, twice. In re Palfy, ___ N.J. ___ (2014). The Court ordered that respondent remain suspended until compliance with the fee arbitration determinations and payment of the ordered sanctions.

Service of process was proper in this matter. On April 3, 2014, the OAE sent a copy of the complaint to respondent's address listed in the records of the New Jersey Lawyers' Fund for Client Protection (a post office box) and a possible home address located by the OAE. The complaint was sent by regular and certified mail. Neither the certified mail nor the regular mail sent to the post office box was returned to the OAE. As of April 5, 2014, the certified mail was available for pick-up at the post office, according to the USPS website. The certified mail sent to respondent's possible home address was returned to the OAE marked "Unclaimed". The regular mail sent to that address was not returned. Although the certified mail receipts were reversed on the mailings, the post office attempted delivery to the addresses on the envelopes.

On or about April 11, 2014, Douglas S. Crawford, Esq., telephoned the OAE to confirm his representation of respondent. On that same date, the OAE faxed to Crawford copies of the complaint and of the OAE's April 3, 2014 letter to respondent. By letter to the OAE dated April 21, 2014, Crawford requested an extension to answer the complaint, which the OAE granted, extending the deadline to May 12, 2014.

On May 7, 2014 the OAE sent a letter to Crawford, further extending to May 23, 2014 the deadline to either answer the complaint or file an affidavit of compliance with R. 1:20-20. On May 30, 2014, the OAE left a voicemail message at Crawford's office that the OAE had not received any submission from, or on behalf of, respondent and that it intended to certify the matter to us as a default.

As of June 12, 2014, the date of the certification of the record, neither respondent nor Crawford had filed an answer to the complaint. On August 22, 2014, Crawford filed a motion to vacate the default, which we determine to deny.

To vacate a default a respondent must meet a two-pronged test. First, the respondent must offer a reasonable explanation for the failure to answer the ethics complaint. Second, the respondent must assert meritorious defenses to the underlying charges.

As to the first prong of the test, respondent admitted that he was aware that the OAE had filed a complaint, on April 1, 2014. He stated that he had immediately contacted his attorney, Crawford, about that matter. As indicated above, Crawford contacted the OAE to request an extension of the time to answer the complaint. The OAE granted that request, giving respondent

until May 12, 2014. After these conversations, Crawford and Deputy Ethics Counsel Hillary Horton came to an agreement, whereby the complaint would be dismissed, if respondent were to file a conforming R. 1:20-20 affidavit. Soon thereafter, Crawford requested another extension of time to answer or, in the alternative, to file the affidavit. Horton granted the request and gave respondent until May 23, 2014 to answer or file the affidavit. Respondent did neither.

Respondent explained that he believed that filing the affidavit was the wisest course, but that, due to several circumstances, it became too cumbersome to be completed in a timely manner. He claimed that he has been working two separate jobs to supplement his income, while temporarily suspended from the practice of law. Both these jobs involve maintenance work and are not only physically demanding, but are also shift work with varying schedules. Further, he has had on-going issues with the custody of his children, a younger sister with serious health issues, and his own health issues, specifically, very high blood pressure that has caused his physician to prescribe several different medications, in an attempt to control the condition.

Respondent attached a R. 1:20-20 affidavit to his motion and subsequently filed the affidavit with the OAE. He has failed to

satisfy both prongs of the test, however. First, he admitted receiving the complaint and being granted an extension of time to answer. In total, from the time the complaint was filed, respondent had forty-two days to file an answer or, in the alternative, his R. 1:20-20 affidavit. He failed to do so. If the affidavit was too "cumbersome," as he alleged, at a minimum he could have filed a verified answer to the complaint, which would have taken relatively little time.

Second, respondent failed to satisfy the other prong of the test by not presenting meritorious defenses to the charges. Essentially, the motion repeated the problems that he was facing at the time. In fact, he stated clearly, "I did not comply with the obligation. I am not trying to present my situation as a total excuse, but rather an understanding of how the current default came to be." He concluded by stating that his goal is to address the various legal matters affecting him and to resume his practice of law. Based on his efforts to address these matters, he requested that we vacate his default.

Because respondent did not present a reasonable excuse for his failure to file either the affidavit or an answer and did not advance any meritorious defenses to the charges, or any defense for that matter, we determine to deny his motion.

The facts of this matter are as follows:

Pursuant to the Court's orders filed on September 27, 2012 (effective October 26, 2012) and June 26, 2013, respondent was ordered 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 do so.

On August 2, 2013, the OAE sent a letter to respondent, by certified and regular mail, to his home/office address on East Main Street, in Freehold, an additional office address on West Main Street, in Freehold, and a post office box kept by respondent in Freehold, advising him of his responsibility to file the R. 1:20-20 affidavit and requesting a response by August 16, 2013. The certified and regular mail sent to the East Main Street address were returned marked "Not Deliverable As Addressed Unable to Forward". The certified mail sent to the West Main Street address was returned marked "Vacant Unable To Forward". The regular mail sent to that address was returned marked

"Attempted Unknown". The certified mail sent to the post office box was returned marked "Unclaimed." The regular mail sent to the post office box was not returned to the OAE. Respondent did not answer the letter nor file the required affidavit.

The complaint alleges sufficient facts to 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 having been temporarily suspended on several occasions, respondent has failed to submit the affidavit of compliance with R. 1:20-20.

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 after a temporary suspension); 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 an 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 Battaglia, 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 Warqo, 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 matters 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).

Respondent has shown a pattern of failure to cooperate with disciplinary and fee arbitration officials. He was temporarily suspended, and remains so today, for his non-compliance with fee arbitration determinations in five separate matters and his failure to cooperate with the OAE in the matter that resulted in his November 2014 censure. In addition, although aware of the complaint in the present matter, he did not file an answer or the required affidavit, despite the OAE's agreement to extend the time for him to do so.


Based on precedent, the baseline discipline for attorneys who have not filed the R. 1:20-20 affidavit and defaulted, but

have only temporary suspensions on their record, is a censure.¹ We determine, however, that an additional enhancement to a three-month suspension is justified, given respondent's pattern of obstinacy toward ethics and fee authorities. We further determine that the suspension should be consecutive to respondent's reinstatement from his temporary suspension.

Member Gallipoli, in a separate dissenting decision, voted for disbarment. Member Singer abstained from voting on the discipline, but voted to deny respondent's motion to vacate the default. Members Yamner and Rivera did not participate.

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

¹ At the time that we reviewed respondent's conduct in this matter, the Court had not yet censured him.

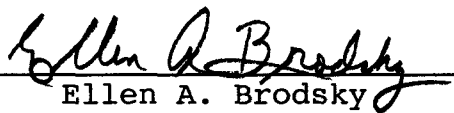
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc Z. Palfy
Docket No. DRB 14-191

Decided: December 16, 2014

Disposition: Three-month consecutive suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli	X					
Hoberman		X				
Rivera						X
Singer					X	
Yamner						X
Zmirich		X				
Total:	1	5			1	2


Ellen A. Brodsky
Chief Counsel